S. Hrg. 101-1159

MISCELLANEOUS BUREAU OF LAND MANAGEMENT AND FOREST SERVICE LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2472 S. 2543 S. 2815 S. 2816
S. 2891 H.R. 2566 H.R. 3888

SEPTEMBER 26, 1990

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MISCELLANEOUS BUREAU OF LAND MANAGEMENT AND FOREST SERVICE LEGISLATION

WEDNESDAY, SEPTEMBER 26, 1990

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Timothy E. Wirth, presiding.

OPENING STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. SENATOR FROM COLORADO

Senator WIRTH. The subcommittee could come to order. This hearing of the Subcommittee on Public Lands, National Parks and Forests will include a number of public lands bills.

Because of the number of pieces of legislation on the agenda I would hope that all of witnesses will summarize their testimony and keep their oral presentations to less than 5 minutes. We have a timer here. We have a lot of material to get through, so I would appreciate everybody's forbearance.

The hearing record will remain open for 7 days to allow any additional input that people may have.

We were going to begin with Congressman Owens, who will testify when he gets here.

We will begin with the administration panel: Mr. Penfold, the Assistant Director for Land and Renewable Resources at the Bureau of Land Management, if he could join us at the witness table; Mr. William Walters, Assistant Director of the National Park Service; Mr. Patrick Hayes, Deputy to the Assistant Secretary for Indian Affairs, Department of the Interior; and Mr. Larry Henson, Associate Deputy Chief of the Forest Service.

We are going to be asking for their comments on a number of pieces of legislation: S. 2474, to authorize an exchange of lands in South Dakota and Colorado; S. 2815, to establish the Kokapelli National Outdoor Theater in the State of Utah; S. 2816, to disclaim right, title, and interest of the United States in and to certain private lands conditionally relinquished to the United States; S. 2891, to authorize and direct an exchange of lands in Colorado; H.R. 2566, to disclaim interest of the United States in certain lands on San Juan Island in Washington; and H.R. 3888, to allow a parcel land in Rockingham County, Virginia, to be used for a child care center.

In addition we will have comment on Section 6 of S. 2543, the Admiralty Island National Monument Land Management Act of 1990, related to a study of certain native villages in Alaska.

We appreciate you all being here. And we will, of course, include your statements in full in the record.

Why do not we begin, if we might, with you, Mr. Penfold, then go to Mr. Walters, Mr. Hayes, Mr. Henson.

[The prepared statement of Senator Warner and the texts of the bills follow:]

JOHN WARNER
VIRGINIA

COMMITTEES
ARMED SERVICES
SELECT COMMITTEE ON INTELLIGENCE
ENVIRONMENT AND PUBLIC WORKS
SPECIAL COMMITTEE ON AGING

John Warner
United States Senate

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STATEMENT OF SENATOR JOHN WARNER
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS
CONCERNING H.R. 3888

SEPTEMBER 26, 1990

Mr. Chairman, I want to thank you and your Committee colleagues for taking swift action to hold a hearing on H.R.3888, a bill introduced by my colleague from Virginia, Congressman Jim Olin.

H.R.3888 would allow a three-acre parcel of land in Rockingham County, Virginia, formerly surplus property of the federal government, to be used as a child care center. The land in question was transferred to Rockingham County in April 1989 by the Department of Interior under the Federal Property and Administrative Services Act. The terms of the property transfer required that it be used as a local park, with one building to be upgraded for recreation.

Mr. Chairman, the terms of the transfer bring us to the need for H.R.3888. Under the Federal Property Act, surplus land transferred for park and recreation purposes must be used for those purposes or it reverts to the federal government. Therefore, Rockingham County cannot use this property for a day care center unless Congress provides a legislative remedy.

The County's desire to use the surplus property for a day care center responds to a strong demand for child care in the community, and the lack of other facilities to meet that need. Under the proposal, a non-profit, non-sectarian center would be established with reduced fees for low-income parents. Any preschool child older than 2 1/2 years would be accepted without regard to race, creed or color.

Mr. Chairman, the Rockingham County project is an extremely worthwhile one. While a day care center is not technically a recreational facility, it certainly serves an important community need. In hearings before the House Interior Committee, the Department of Interior testified that it would not object to Congressional approval of H.R.3888, because a child care center "is not inconsistent with recreation use in terms of its effect on the resource." Moreover, the Department indicated that the proposed use "will not destroy the open-space character of the land...."

Mr. Chairman, it is my hope that the Subcommittee will reach the same conclusions as a result of today's hearing, and that the full Committee will approve H.R.3888 as swiftly as possible.

Thank you, Mr. Chairman.

II

101st CONGRESS
2d Session

S. 2474

To authorize an exchange of lands in South Dakota and Colorado.

IN THE SENATE OF THE UNITED STATES

April 19 (legislative day, April 18), 1990

Mr. Daschle (for himself, Mr. Pressler, and Mr. Wirth) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize an exchange of lands in South Dakota and Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) Findings.—The Congress finds and declares that—

(1) certain lands located within or adjacent to the Black Hills National Forest in Lawrence, Pennington, and Meade Counties, South Dakota, are currently in private ownership;

(2) these lands, which are owned by Homestake Mining Company of California (hereinafter in this Act

referred to as "Homestake"), are intermingled with national forest lands and comprise potential valuable additions to the Black Hills National Forest to serve important public objectives, including (but not limited to)—

(A) public access and opportunities for hunting, fishing, and other outdoor recreation;

(B) fish and wildlife habitat protection (including blue ribbon trout habitat in Spearfish Creek);

(C) the preservation of scenic beauty;

(D) public access to and enhancement of the outstanding scenic, natural, and recreational values of Spearfish Canyon and other canyons within the Black Hills;

(E) protection of the scenic backdrop to the Spearfish Canyon National Forest Scenic Byway; and

(F) more efficient national forest land management;

(3) such lands, if not acquired for addition to the Black Hills National Forest, may be sold and developed for purposes which may be incompatible with the objectives referred to in paragraph (2);

(4) Homestake has offered to sell or exchange such lands, which total approximately 12,274 acres, with the United States so that they may be acquired for national forest and land conservation purposes;

(5) Homestake has identified national forest lands in Summit County which—

(A) it or local government units would like to acquire;

(B) are intermingled with or adjacent to privately owned and developed lands;

(C) are currently developed, permitted for ski area or local government purposes, or adjacent to developed or permitted areas or communities;

(D) do not appear necessary for retention in government ownership to serve the public interest or objectives; and

(E) are therefore suitable for disposal through a land exchange; and

(6) given the relative environmental and other values of the lands proposed for exchange in this Act, the land exchange set forth herein is in the public interest and represents the land acquisition strategy which can best meet dual public objectives of acquiring the Spearfish Canyon and other South Dakota properties while at the same time minimizing or eliminating

cash outlays by the United States to achieve such objectives.

(b) PURPOSE.—It is the purpose of this Act to authorize, direct, and expedite the consummation of the interstate land exchange and transfer set forth in this Act in order to further the public interest by acquiring lands in South Dakota with important values for permanent public management and protection and to transfer certain lands to non-Federal ownership in Summit County, Colorado.

SEC. 2. SOUTH DAKOTA-COLORADO LAND EXCHANGE.

(a) IN GENERAL.—The Secretary of Agriculture shall exchange lands with Homestake as set forth in this Act upon receipt of an offer from Homestake which conforms with the provisions of this Act.

(b) CONVEYANCE BY HOMESTAKE.—Except as otherwise provided in this subsection, Homestake shall convey to the Secretary of Agriculture all right, title, and interest of Homestake in and to certain lands in Lawrence, Pennington, and Meade Counties, South Dakota, which comprise approximately 12,274 acres, including approximately 1,250 acres of riparian lands in Spearfish Canyon which encompass some 20 miles of stream frontage on Spearfish Creek, and which are generally depicted on maps entitled "Forest Service-Homestake Land Exchange-South Dakota Lands to Forest Service", numbered A–H, and dated February 1990. In making such conveyance Homestake shall retain the following:

(1) All mineral rights in the lands conveyed pursuant to this subsection that are owned, held, or controlled by Homestake as of the date of enactment of this Act, except that any future exercise of such mineral rights shall be subject to the laws, rules, and regulations of the United States pertaining to surface and other use of lands conveyed to the Secretary of Agriculture where mineral rights are reserved.

(2) All water rights within the watershed of Spearfish Creek and its tributaries owned, held, or controlled by Homestake as of the date of enactment of this Act.

(3) Cabin sites as indicated on the map numbered "A" referenced in this subsection within the watershed of Spearfish Creek and its tributaries which are intermingled with the lands to be conveyed to the Secretary of Agriculture but which are owned and permitted by Homestake to private parties and will continue to remain in private ownership.

(c) CONVEYANCE BY UNITED STATES.—Upon receipt of title to the lands identified in subsection (a) of this section, the Secretary of Agriculture shall simultaneously convey to Homestake subject to valid existing rights and existing national forest improvements, all right, title, and interest of the United States in and to the following:

(1) Approximately 1,410 acres of lands located in Summit County, Colorado, as generally depicted on maps entitled "Forest Service-Homestake Land Exchange-Lands to Homestake", numbered 1–6, and dated March 1990, except that the lands identified on map number 5 and generally known as the South Frisco Bay parcel shall not be patented to Homestake unless and until the town of Frisco and Summit County, Colorado, jointly agree to a land use plan for such parcel. If the South Frisco Bay parcel is not patented to Homestake within 18 months after the date of enactment of this Act, the Secretary shall in lieu thereof pay Homestake cash equalization moneys without regard to the 25 percent limitation contained in section 3(a) or offer Homestake timber credits pursuant to that subsection.

(2) Up to 40 acres of lands located in Lawrence County, South Dakota, which currently comprise 38 national forest cabin permit sites as generally depicted on a map entitled "Forest Service-Homestake Land Exchange-Spearfish Cabin Sites to Homestake", dated February 1990, and which shall in turn be sold to the current cabin permittees by Homestake at fair market

value upon application by the permittees or their successors in interest. The transfer of any particular cabin site to Homestake pursuant to this subparagraph shall be contingent on the permittee's request of such a transfer. If such a request is not made, the site shall continue to be permitted by the Secretary of Agriculture in accordance with existing rules, regulations, and procedures.

(d) RESERVATIONS.—Patents issued by the Secretary of the Interior for the lands conveyed pursuant to subsection (c)(1) shall reserve to the public, for administration by the Secretary of Agriculture or by such State or local units or agencies of government, or by private nonprofit organizations, as the Secretary of Agriculture in consultation with local planning authorities determines appropriate and qualified to fulfill the purposes of the reservation—

(1) the right of access for fishing use along all streambeds (up to the ordinary high water mark) on streams which flow through the lands conveyed;

(2) a right-of-way for the Colorado Trail along its existing routes through the lands identified on map 3 of the maps referred to in subsection (c) or along relocated routes as may be identified by the Secretary of Agriculture in consultation with local planning authorities; and

(3) a right-of-way for relocation of the existing bicycle path through the lands identified on map 2 of the maps referred to in subsection (c) to a new route as may be identified by the Secretary of Agriculture in consultation with local planning authorities.

(e) REVOCATION.—The Wheeler Administrative Site Withdrawal (C–28287) is hereby revoked.

SEC. 3. TERMS AND CONDITIONS OF EXCHANGE.

(a) EQUALIZATION OF VALUES.—The values of the lands to be exchanged pursuant to this Act shall be equal as determined by the Secretary of Agriculture, or if they are not equal, shall be equalized by the payment of money to Homestake or to the Secretary subject to the 25 percent cash equalization limitation of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The Secretary shall try to reduce the amount of cash equalization to as small an amount as possible. In lieu of any cash equalization payments which may be due Homestake pursuant to this Act, the Secretary may offer Homestake a monetary credit, which shall be considered "moneys received" within the meaning of the Act of May 23, 1908, against any moneys owed the Secretary by Homestake or its agents for timber sales within the Black Hills National Forest.

(b) APPRAISALS.—In order to expedite the consummation of the exchange directed by this Act, Homestake shall arrange and pay for appraisals by a qualified appraiser or appraisers mutually acceptable to Homestake and the Secretary of all lands to be included in the exchange. Such appraisals shall be completed and submitted to the Secretary for approval within 60 days of the date of enactment of this Act. In the event the Secretary and Homestake are unable to agree to the appraised value of a certain tract or tracts of land to be included in the exchange within 120 days after the date of enactment of this Act, the appraisal, appraisals, or appraisal issues in dispute shall be referred to bargaining or third party resolution or arbitration as set forth in section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)). In determining which of the bargaining or third party dispute resolution or arbitration mechanisms to utilize pursuant to such section, Homestake and the Secretary shall recognize that Congress has already determined that the exchange directed by this Act is in the public interest and shall give emphasis to the appraisal dispute mechanism or mechanisms which will best permit the deadlines set forth in this Act to be timely met.

(c) EXCHANGE AGREEMENTS.—Upon the completion of appraisals, the exchange of lands authorized and directed by this Act shall be consummated pursuant to an exchange agreement between the Secretary and Homestake executed in accordance with the policies and procedures normally used in national forest land exchanges. The exchange shall be consummated at the earliest possible date and in no case later than 270 days after the date of enactment of this Act.

(d) Addition to Black Hills National Forest.—Lands acquired by the United States within or adjacent to the exterior boundaries of the Black Hills National Forest shall be added to and administered as part of the Black Hills National Forest. The exterior boundary of the Black Hills National Forest is hereby authorized to, and shall be modified to, incorporate such lands upon their acquisition by the United States. Upon their inclusion in the National Forest System such lands shall be managed in accordance with the laws, rules, and regulations generally applicable to the National Forest System, unless otherwise specifically provided by this Act.

SEC. 4. CONVEYANCE TO SUMMIT COUNTY, COLORADO.

The Secretary of Agriculture shall convey to Summit County, Colorado, all right, title, and interest of the United States in and to approximately 325 acres of land as generally depicted on a map numbered 7 and entitled "Summit County Landfill", dated March 1990. Such conveyance shall be completed within 6 months after the date of enactment of this Act and shall be subject to the following conditions:

(1) The lands conveyed shall continue to be used for solid waste disposal, expansion of the Summit

County landfill, or other authorized purposes of Summit County government.

(2) In the event Summit County ever sells, exchanges, or otherwise disposes of all or a portion of the lands acquired pursuant to this section, all proceeds of such sale, exchange, or disposal shall accrue to the United States, or the Secretary of Agriculture may elect to reacquire, without compensation to Summit County, any or all portions of such lands which have not been used for solid waste disposal, as the Secretary determines appropriate prior to their sale, exchange, or disposal.

(3) The patent issued by the Secretary of the Interior pursuant to this section shall not contain a reverter provision and under no circumstances shall lands used for solid waste disposal be eligible for reversion to the United States by operation of law after the issuance of such patent.

○

II

101st CONGRESS
2d Session

S. 2543

Entitled the "Admiralty Island National Land Management Act of 1990".

IN THE SENATE OF THE UNITED STATES

April 30 (legislative day, April 18), 1990

Mr. Murkowski introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

Entitled the "Admiralty Island National Land Management Act of 1990".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE AND PURPOSE.

(a) Title.—This Act may be cited as the "Admiralty Island National Monument Land Management Act of 1990".

(b) Purpose.—The purpose of this Act is to improve Federal management of lands on Admiralty Island, Alaska, as provided herein.

SEC. 2. FINDINGS.

The Congress hereby finds that—

(1) Admiralty Island National Monument, Alaska, is an area of unparalleled natural beauty containing multiple values including but not limited to, fish, wildlife, forestry, recreational, subsistence, educational, wilderness, historical, cultural, and scenic values of enduring benefit to the Nation and the Native peoples residing therein; and

(2) land management and Federal administration of Admiralty Island National Monument may be enhanced by Federal land acquisitions, through land exchanges or otherwise, and by cooperative agreements between the Federal Government and the indigenous residents of the island, the people of the city of Angoon and the Native Village Corporation, Kootznoowoo, Incorporated.

SEC. 3. LAND ACQUISITION AND EXCHANGE.

(a) Section 506(a) of the Alaska National Interest Lands Conservation Act (Public Law 94–487, as amended) is hereby amended by adding at the end thereof the following new paragraph:

"(9)(A) The Secretary is authorized and directed to enter into such cooperative agreements and agreements for land acquisitions, through exchange or otherwise, with Kootznoowoo as are deemed necessary by the Secretary to carry out the purposes specified in sections 101 and 503 of this Act and to improve the management of Federal lands on Admiralty Island.

"(B) The Secretary shall make every effort to complete agreements within eighteen months of the date of enactment of this paragraph.

"(C) The Secretary shall report to Congress before the end of such eighteen-month period on the status and results of negotiations with Kootznoowoo. The report shall include, but not be limited to, any Kootznoowoo properties proposed to be acquired by the United States, any Federal land or other compensation to be offered in exchange, and the text of any proposed or executed agreements.

"(D) Any lands on Admiralty Island acquired by the United States pursuant to this paragraph shall be added to and incorporated within the Admiralty Island National Monument.

"(E) The inability of the Secretary and Kootznoowoo to reach agreement shall not preclude subsequent negotiations at any time for the purposes of land exchanges or other matters.

"(F) Enactment of this paragraph shall not create any right or cause of action by Kootznoowoo, Incorporated, or any other party against the United States.".

SEC. 4. LAND SELECTION CONSOLIDATION.

(a) Section 506(a)(5) of the Alaska National Interest Lands Conservation Act (Public Law 96–487, as amended) is hereby amended by adding at the end thereof the following new subparagraphs:

"(C) In order to consolidate Federal land ownership and improve management of all land and timber resources in the area, the lands between such sale area and lands lying to the east of such sale area which have been or may be conveyed to Kootznoowoo pursuant to this paragraph (5) shall be made available by the Secretary for an exchange between the Federal Government and Kootznoowoo, Incorporated, pursuant to the terms of section 1302(h) of this Act. If such sale is voluntarily terminated, or is canceled or forfeited in accordance with applicable law and regulations, then the lands within the sale area shall also be made available for exchange. The availability of these lands for exchange shall continue for one year following the date the sale is completed and closed, or for one year following its termination, cancellation, or forfeiture, whichever is later. Nothing in this section shall affect valid land selections which the State of Alaska has filed with the Federal Government pursuant to Public Law 85–508, nor shall this section cause these lands to be removed from entry pursuant to the Mining Law of 1872.

"(D) Subject to lode mining claims, known as KAEL 1-216 inclusive, and valid existing rights, the subsurface estate in the lands conveyed to Kootznoowoo, Incorporated, pursuant to subparagraph (C) shall be granted to Sealaska Corporation.".

SEC. 5. ADMINISTRATIVE PROVISIONS.

(a) Section 703(a)(1) of the Act is amended by deleting the words "Admiralty Island National Monument Wilderness" and inserting in lieu thereof "Kootznoowoo Wilderness".

(b)(1) All rights, title, and interests to that portion of the approximately seventeen and thirty-four one hundredths acres comprising the Angoon Administrative Site which, pursuant to paragraph (c)(2) of this section, the Secretary dedicates for uses related to the administration of the Tongass National Forest, are hereby confirmed in the United States, said parcel being a valid existing Federal administrative site as referenced in section 506(a)(3)(A) of the Alaska National Interest Lands Conservation Act (Public Law 96–487, as amended). Said administrative site is located on Admiralty Island in township 50 south, range 68 east, section 31, Cooper River Meridian and township 50 south, range 67 east, section 36, Cooper River Meridian.

(2) Within one year of enactment of this paragraph, the Secretary of Agriculture shall adjust, and resurvey as necessary, the boundaries of the Angoon Administrative Site to include only that portion of the site described as follows:

(A) Those lands which lie within the following described boundaries, comprising four and sixty-eight one-hundredths acres more or less:

Beginning at corner 1, also corner 9 of United States survey numbered 8756;

Thence north 45 degrees 30 minutes west, 540.79 feet to corner 2;

Thence north 45 degrees 00 minutes east, 876.60 feet to corner 3;

Thence south 45 degrees 30 minutes east, 540.79 feet to corner 4;

Thence south 45 degrees 00 minutes west, 876.60 feet to corner 1, also corner 9 of United States survey numbered 8756, the point of beginning.

(B) Those lands which lie within that area adjoining the northeastern boundary of the four and sixty-eight one-hundredths acre tract and the mean high tide line of Kootznoowoo Inlet, subject to a perpetual public easement for the existing Angoon-Killisnoo Road; and

(C) An easement for road and utility access to the four and sixty-eight one-hundredths acre tract from the western or southern boundary of the seventeen and eighty-four one-hundredths acre site. To the maximum extent feasible, the Secretary shall locate said easement to connect to and follow the existing right of way for Relay Road, which lies between lots 1 and 6 of the Samuel G. Johnson subdivision. Said easement shall be at a precise location and of dimensions which the Secretary determines are reasonably necessary for present and projected Federal uses of the site related to administration of the Tongass National Forest. Said easement shall be subject to any valid existing rights except those of Kootznoowoo, Incorporated: *Provided,* That the easement shall not be located on any lands conveyed by Kootznoowoo, Incorporated, to a third party prior to June 1, 1988, without the express consent of such party: *Provided further,* That the Secretary shall exclude from the lands so retained those lands which were occupied on June 1, 1988, by structures and improvements that were not constructed by or for the United States including easements related thereto, or which were constructed by or for the United States but which the Secretary determines are not reasonably necessary for present or projected Federal uses related to the administration of the Tongass National Forest: *Provided further,* That the Secretary shall not exclude from the four and sixty-eight one-hundredths acre tract any lands occupied by existing power or utility lines or poles, and the lands so occupied shall be subject to an easement to allow for their continued use, maintenance, and repair.

(3) Title to all lands within the seventeen and thirty-four one-hundredths acre administrative site which are not included by the Secretary in the adjusted area provided by paragraph (c)(2) shall be conveyed by the Secretary of Agriculture by quitclaim deed to Kootznoowoo, Incorporated.

(4) The provisions of paragraphs (c)(2) and (c)(3) are subject to the condition precedent that Kootznoowoo, Incorporated, executes an appropriate written agreement acceptable to the United States attorney for the District of Alaska to dismiss, with prejudice, the pending litigation entitled Kootznoowoo, Incorporated, versus United States Department of Agriculture, Forest Service, Civil Numbered A84-575, in the United States District Court for the District of Alaska, and agrees therein that Kootznoowoo, Incorporated, and the United States shall each bear their own costs of said litigation, including attorneys' fees.

SEC. 6. STUDY.

(a) Congress recognizes that the Native residents of the villages of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell were unable to organize village corporations, urban corporations, or group corporations pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629e), despite pursuit of such means as were available to them for redress of their grievances, and accordingly may not have been afforded just and equitable treatment for the settlement of their aboriginal claims consistent with the intent, purpose, and promise of the Alaska Native Claims Settlement Act.

(b) The Secretary of the Interior, in consultation with the Secretary of Agriculture, is hereby authorized and directed to prepare a written study of the history of the villages of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell in relation to the history of the villages described in sections 16 (a) and (d) of the Alaska Native Claims Settlement Act and the villages of Sitka and Juneau. Such agencies and instrumentalities of the United States Government as may have information relevant to this study are hereby authorized and directed to cooperate in the research for and preparation of this study. The representatives of the Natives of the five affected villages, the State of Alaska, Sealaska Corporation, the Sealaska Heritage Foundation, the Tlingit and Haida Central Council, the Alaska Federation of Natives, and such other historical and cultural organizations as are interested are invited and encouraged to cooperate in the study.

(c) The study shall be completed and delivered by the Secretary of the Interior to Congress on or before January 1, 1991. The Secretary of the Interior shall also submit any legislation necessary to implement the study recommendations to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources within three months after submitting the study.

(d) The study shall include—

(1) determination of whether the history of Native occupation and use of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell indicates that such communities have an equitable claim to Native Corporation status under ANCSA;

(2) identification of public or private land and other assets that can be made available for conveyance to Native corporations organized by the Native residents of each of the five villages in the event they are accorded such status; and

(3) identification of the means of properly funding any such Native corporations.

(e) In this section 6, "ANCSA" means the Alaska Native Claims Settlement Act (Public Law 92-203, 85 Stat. 688), as amended.

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II

101st CONGRESS
2d Session

S. 2815

To establish the Kokapelli National Outdoor Theater in the State of Utah, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 28 (legislative day, June 11), 1990

Mr. Garn (for himself and Mr. Hatch) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To establish the Kokapelli National Outdoor Theater in the State of Utah, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Kokapelli National Outdoor Theater Act".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "Foundation" means the Kokapelli National Outdoor Theater Foundation to be established

by the University of Utah for the purpose of raising funds and administering programming for the theater;

(2) the term "theater" means the Kokapelli National Outdoor Theater established by section 3; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 3. ESTABLISHMENT.

(a) ESTABLISHMENT.—For the purposes of establishing in the southwest United States a theater dedicated primarily to promoting western and Native American culture, the performing arts, and related educational programs, the Secretary may establish, develop, improve, operate, and maintain in Moab, Utah, the Kokapelli National Outdoor Theater.

(b) DESCRIPTION.—The theater shall consist of the lands and interests in lands comprising approximately ______ acres of public lands within the area generally depicted on the map entitled "Kokapelli Outdoor Theater", dated July 1990. The map shall be on file and available for public inspection in the offices of the Bureau of Land Management, Department of the Interior.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the theater through the Bureau of Land Management in accordance with this Act and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(b) DESIGN OF FACILITY.—The design of any facility at the theater shall be subject to the approval of the Secretary.

(c) COOPERATIVE AGREEMENTS FOR FIREFIGHTING, RESCUE, LAW ENFORCEMENT, AND OTHER PURPOSES.—In administering the theater, the Secretary may enter into cooperative agreements, not conflicting with the cooperative agreement described in section 5, with the State of Utah or any political subdivision thereof for the rendering, on a reimbursable basis, of—

(1) rescue, firefighting, and law enforcement services;

(2) cooperative assistance by local law enforcement and fire prevention agencies; and

(3) other services.

SEC. 5. COOPERATIVE AGREEMENT WITH FOUNDATION FOR PRESENTATION OF PROGRAMS.

(a) TERMS AND CONDITIONS FOR FEDERAL ASSISTANCE.—The Secretary may enter into a cooperative agreement with the Foundation regarding the presentation of performing arts and related educational and cultural programs at the theater. The Secretary may provide technical and financial assistance under the cooperative agreement for such purposes, pursuant to such terms and conditions as the Secretary deems appropriate.

(b) CONDITIONS.—As a condition of entering into a cooperative agreement under this section, the Secretary shall require that—

(1) the Foundation maintain, at the Foundation's expense, insurance on the theater and its facilities regarding such risks, in such amounts, and containing such terms and conditions, as are satisfactory to the Secretary;

(2) any repairs or reconstruction carried out with the proceeds of the insurance described in paragraph (1) shall be subject to the approval of the Secretary; and

(3) the Foundation maintain its status as an organization described in section 501(c)(3) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(c) REQUIRED TERMS AND CONDITIONS.—A cooperative agreement under this section shall provide that—

(1) the Secretary and the Comptroller General of the United States or their duly authorized representatives have access to any pertinent books, documents, papers, and records of the Foundation to make audits, examinations, excerpts, and transcripts;

(2) the Foundation prepare and submit an annual report to the Secretary, which shall also be submitted

to the appropriate committees of the Congress, summarizing the activities of the previous year (together with a comparison of goals and objectives with actual accomplishments) and presenting a plan for the forthcoming year; and

(3) the agreement may be terminated at the convenience of the United States if the Secretary determines that termination is in the public interest,

and shall contain such other terms and conditions as the Secretary deems appropriate.

(d) REQUIREMENT FOR COST SHARING.—The Federal share for the support for the presentation of performing arts and related educational and cultural programs at the theater may not exceed 65 percent of the total support for such presentations and shall be provided on a matching basis. The non-Federal share of such support may be in the form of cash, services, or in-kind contributions, fairly valued.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $6,000,000 for the Federal portion for design and construction of facilities at the theater and such sums as may be necessary to carry out this Act other than the design and construction of facilities at the theater.

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II

101st CONGRESS
2d Session

S. 2816

To disclaim all right, title, and interest of the United States in and to certain private lands conditionally relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 28 (legislative day, June 11), 1990

Mr. Garn introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To disclaim all right, title, and interest of the United States in and to certain private lands conditionally relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds the following:

(1) Pursuant to the invitation and requirements contained in the 15th paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended by the Acts of

June 6, 1900 (31 Stat. 588, 614) and March 4, 1901 (31 Stat. 1010, 1037), certain landowners and homestead claimants conditionally conveyed their lands to the United States as the basis for an in lieu selection of other Federal lands (hereafter in this Act referred to as "lieu lands") in exchange for the relinquished lands (hereafter in this Act referred to as "base lands").

(2) By the Act of March 3, 1905 (33 Stat. 1264), Congress repealed the in lieu selection provisions of the Act of June 4, 1897, as amended, and thereby rejected tendered base lands and terminated the right to select lieu lands, but expressly preserved the rights of land owners who had valid pending applications for in lieu selections, most of which have subsequently been granted.

(3) Many other persons who conditionally relinquished base lands, or their successors in interest, have never obtained either (A) a patent to the lieu lands they selected or any other consideration for their relinquishment, or (B) a reconveyance of their base lands or any formal disclaimer of any Federal interest in such lands from the United States.

(4) The courts have uniformly held that the conditional relinquishment of the base lands by their owners vested only record title in the United States and that a

grantor retained equitable title in the base lands until the in lieu selection was approved and the exchange completed, but the authority of the Federal agencies involved to take appropriate action to reconvey or disclaim any interest in the base lands has been unclear over the years and the authority to do so conferred by subsequent legislation has not solved the problem with respect to all of the base lands.

(5) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons with claims against the government because of approved but incomplete exchanges under the Act of June 4, 1897. Congress acted on the mistaken assumption that, by the passage of time and assertions of management authority over the base lands by Federal agencies, title to such lands had vested in the United States. However, the courts have subsequently rejected that contention. Moreover, no claims have been approved or payments made under that Act and differences of opinion as to its scope and constitutionality have caused further uncertainty with respect to the title status of base lands conditionally tendered to the United States for which (A) no lieu selection application was approved, (B) no lieu land patent was issued in exchange, (C) no timber cutting rights or other con-

sideration was received, and (D) no quit claim deed heretofore has been issued by the United States.

(6) The Forest Service and the Bureau of Land Management presently claim unrestricted fee title to approximately 19,000 and 8,000 acres, respectively, of base lands based on their interpretation of the Act of June 4, 1897, and the Act of July 6, 1960, and, absent massive litigation initiated by those agencies to attempt to validate their claims, the title to such base lands will remain clouded because the private equitable owners may be barred from initiating actions under section 1346 of title 28, United States Code, or section 2409a of such title 28, under the limitation periods relating to those sections.

(b) PURPOSE.—The purpose of this Act is to remove existing clouds on the titles to base lands resulting from past Federal legislation and administrative actions.

SEC. 2. DISCLAIMER OF FEDERAL INTEREST IN BASE LANDS.

(a) DISCLAIMER.—Notwithstanding any other provision of law, the United States hereby disclaims all right, title, and interest in and to the base lands described on the list prepared pursuant to subsection (b).

(b) PREPARATION OF LIST.—Within six months after the date of enactment of this Act, the Secretary, of the Interior or (hereafter in this Act referred to as the "Secretary"), in consultation with the Secretary of Agriculture with respect to National Forest System lands, shall prepare a list of all parcels of base lands that were conditionally relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which—

(1) no lieu selection application was approved,

(2) no patent to the lieu parcel was issued,

(3) no timber cutting rights or other consideration was received, and

(4) no quit claim deed heretofore has been issued by the United States.

(c) NATIONALLY SIGNIFICANT LANDS.—(1) In preparing the list under subsection (b), the Secretary shall identify those base lands which are located within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, National Recreation or Scenic Areas, the National Park System, or are administered by any federal agency outside those designated systems and possess important public values which require Federal ownership.

(2) The Secretary is authorized to acquire by purchase, gift or exchange, the lands identified under paragraph (1) at their current fair market value. If no agreement for the purchase of any such lands can be reached within one year after the date of enactment of this Act, the Secretary is authorized

to condemn such lands. If the Secretary elects not to acquire any such lands, or has not entered into a condemnation proceeding with respect to any such lands, within the two-year period beginning after the date of enactment of this Act, the Secretary shall issue instruments disclaiming all right, title, and interest of the United States in and to any such lands in accordance with subsection (d). Such instruments shall be issued within six months after the end of such two-year period.

(d) ISSUANCE OF INSTRUMENTS DISCLAIMING INTERESTS.—Except as provided in subsection (c), within six months after the date on which the list of lands is prepared under subsection (b), the Secretary shall issue instruments disclaiming all right, title, and interest of the United States in and to the lands on such list to the original grantors of the base lands, his or her heirs or assigns. Each such instrument shall be in a form suitable for recordation and shall have the same legal effect as a quit claim deed from the United States. Each such instrument shall be filed with the appropriate officials of the country within which the base lands are located so that the title to such lands may be determined in accordance with applicable State law.

(e) WAIVER OF CERTAIN CLAIMS AGAINST THE UNITED STATES.—Any person or entity claiming or accepting the benefits of this Act with respect to base lands shall be deemed to have waived any claim for damages for actions taken by the United States, its agents or contractors with respect to such base lands prior to the date on which the interests of the United States to such base lands was extinguished under this Act.

(f) INAPPLICABILITY OF ACT OF JULY 6, 1990.—Effective on the date on which the list is prepared under subsection (b), the Act of July 6, 1960 (74 Stat. 334), shall not apply to any base lands on such list.

(g) EFFECTIVE DATE.—This section shall take effect 30 days after the date on which the Secretary submits the list of parcels prepared pursuant to subsection (b) to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

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II

101st CONGRESS
2D SESSION

S. 2891

To authorize and direct an exchange of lands in Colorado.

IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 10), 1990

Mr. WIRTH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To authorize and direct an exchange of lands in Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) The Congress finds and declares that—

(1) certain lands currently administered by the White River National Forest, Colorado, which comprise approximately two hundred and seventeen acres and are commonly known as the Mt. Sopris Tree Nursery have been tentatively identified as surplus property suitable for sale by the United States;

(2) such lands lie in Eagle County and in close proximity to Pitkin County in an area of Colorado that

is experiencing rapid population growth and escalating real estate prices which are adversely affecting the availability of lands for the development by the counties of affordable public recreational and administrative facilities;

(3) the Mt. Sopris Tree Nursery property is ideally located to serve Forest Service administrative needs and to meet the needs of Pitkin and Eagle Counties to provide affordable public recreational facilities and other public services in an area of the counties where such facilities and services are currently lacking or in very short supply;

(4) Pitkin and Eagle Counties are offering to convey to the United States approximately one thousand three hundred and forty-four acres of patented mining claim properties owned by the counties within or adjacent to the White River National Forest, including approximately six hundred and seventy-nine acres of inholdings within the Holy Cross, Hunter Fryingpan, Collegiate Peaks, and Maroon Bells Snowmass Wilderness Areas;

(5) the patented mining claim properties being offered to the United States by the counties are valuable national forest inholdings, which if acquired by the United States, will facilitate national forest administra-

tion, further the purposes of the National Wilderness Preservation System, and protect other lands within the National Forest System with important wildlife, scenic, watershed and recreational values.

(b) It is the purpose of this Act to authorize and direct—

(1) that the Secretary of Agriculture retain approximately thirty-one acres of the Mt. Sopris Tree Nursery property to meet future administrative needs of the White River National Forest;

(2) that the Secretary of Agriculture convey to Pitkin and Eagle Counties, Colorado, the balance of the Mt. Sopris Tree Nursery property, comprising approximately one hundred and eighty-six acres, for retention and use by the counties for the development of public recreational facilities, the protection of riparian lands, wildlife habitat and public access along the Roaring Fork River, and such other public purposes as the counties determine appropiate; and

(3) that in return for making a conveyance of valuable lands to the counties, the Secretary of Agriculture shall acquire inholdings within the White River National Forest, including inholdings within four designated wilderness areas, which the Congress believes

possess public values equal or greater to the public values of the lands being conveyed to the counties.

SEC. 2. RESERVATION TO SECRETARY OF AGRICULTURE.

Upon enactment of this Act there are hereby reserved to the Secretary of Agriculture as part of the White River National Forest for such a period as the Secretary of Agriculture determines appropriate approximately thirty-one acres of land, as generally depicted on a map entitled "Mt. Sopris Tree Nursery Administrative Site", dated April 1990. Such lands may be utilized for National Forest administrative purposes, or for open space, recreational or other purposes consistent with facilities on the adjoining lands transferred to Pitkin and Eagle Counties, as the Secretary of Agriculture deems appropriate. In the event the Secretary ever determines that such lands are no longer necessary or desirable for retention in National Forest ownership he may dispose of such lands under authorities applicable to the National Forest System: *Provided, however,* That prior to any such disposal the Secretary shall first offer to sell or exchange such lands to the counties at fair market value.

SEC. 3. CONVEYANCE TO PITKIN AND EAGLE COUNTIES.

Within six months of the date of enactment of this Act, the Secretary of Agriculture is directed to convey jointly to Pitkin and Eagle Counties, Colorado, without monetary compensation, all right, title, and interest of the United States in approximately one hundred and eighty-six acres of lands, as generally depicted on a map entitled "Mt. Sopris Tree Nursery—Conveyance to Pitkin and Eagle Counties", dated April 1990. It is the intention of Congress that such lands shall be retained and used by the counties for public recreation and recreational facilities, open space and riparian habitat protection, fairgrounds, and such other public purposes as the counties determine appropriate. It is further specified that the patent issued by the Secretary of the Interior for such lands shall reserve in perpetuity to the public the right of access in and along the Roaring Fork River for fishing and other recreational use as determined appropriate by the Secretary of Agriculture in consultation with the counties: *Provided, however,* That the Secretary of Agriculture may transfer administration of such access and use to the counties or to such other State or local units or branches of government, or private nonprofit organizations, as the Secretary in consultation with the counties determines qualified and appropriate to fulfill the purposes of the reservation. In the event the counties ever sell, exchange, or otherwise dispose of all or a portion of the lands acquired pursuant to this section or lease them for purposes inconsistent with the intentions of this Act, all proceeds of such sale, exchange, disposal, or lease shall accrue to the United States and shall be considered money received and deposited pursuant to the Act of December 4, 1967 (and commonly known as the Sisk Act), or the Secretary of Agriculture may elect to reacquire, without compensation to the counties, any or all portions of such lands as he determines appropriate prior to their sale, exchange, disposal, or lease.

SEC. 4. COUNTIES' CONVEYANCE TO UNITED STATES.

(a) In consideration of the valuable lands to be conveyed to Pitkin and Eagle Counties, Colorado, pursuant to section 3 of this Act, upon receipt of title to the lands specified in section 3, the counties shall immediately convey by quitclaim deed to the Secretary of Agriculture, and the Secretary shall accept all right, title, and interest of the counties in approximately—

(1) one thousand two hundred and ninety-one acres of lands owned by Pitkin County within and adjacent to the boundaries of the White River National Forest, Colorado, as generally depicted on maps entitled "Pitkin County Lands to Forest Service", numbered 1-11, and dated April 1990; and

(2) fifty-two acres of lands owned by Eagle County within and adjacent to the boundaries of the White River National Forest, Colorado, as generally depicted on maps entitled "Eagle County lands to Forest Service", numbered 12-14, and dated April 1990.

(b) Upon their acquisition by the Secretary of Agriculture, such lands shall become a part of the White River National Forest (or in the case of portions of parcels 39, 40, and 41 depicted on map 9, and a portion of parcel 54 on map 12, part of the Gunnison and Arapaho National Forests, respectively) for administration and management in accordance with the laws, rules, and regulations generally applicable to lands acquired for incorporation in the National Forest System: *Provided, however,* That such lands shall be permanently withdrawn from disposition under all laws pertaining to mineral leasing on acquired lands. Lands acquired within the boundaries of the Holy Cross, Hunter Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness Areas shall also henceforth be incorporated in and deemed to be a part of their respective wilderness areas and shall be administered in accordance with the provisions of the Wilderness Act governing areas designated as wilderness.

SEC. 5. MISCELLANEOUS PROVISIONS.

(a) As all lands to be conveyed pursuant to this Act will henceforth be retained and utilized for public purposes by either Pitkin or Eagle Counties or the Secretary of Agriculture, and as the Secretary will retain an interest in the lands to be conveyed pursuant to section 3 of this Act should they ever be used by the counties for purposes not intended by this Act, and as preliminary appraisals of the lands identified in sections 3 and 4 indicate that the values of the lands being offered by Pitkin and Eagle Counties are approximately equal to or exceed the values of the portion of the Mt. Sopris Tree Nursery to be conveyed out of Federal ownership, the exchange and transfer of properties authorized and directed by this Act may be consummated without appraisals of the lands involved or the cash equalization payments normally required for exchanges of lands pursuant to section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716).

(b) Lands acquired by the Secretary of Agriculture pursuant to section 4 of this Act shall become part of the National Forest System and all right, title, and interest in such lands shall immediately vest in the United States upon the issuance of a deed to the United States by Pitkin or Eagle Counties. Any person or party who may thereafter question the right, title, or interest of the United States to such lands is entitled within eighteen months of the date of enactment of this Act to name the United States as a defendant in a civil action to adjudicate a disputed right, title, or interest. Any such civil action shall be brought in the United States District Court for the District of Colorado and the complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims against the United States, and clearly specify the precise circumstances, laws, and actions under which such alleged right, title, or interest was acquired by the plaintiff or plaintiffs and shall additionally specify the consideration paid to previous landowners, if any, to acquire such right, title, or interest. The plaintiff in any such action shall have the burden of proof in establishing the validity any such claim against the United States: *Provided further*, That—

(1) in order to save legal costs to the United States, if more than one action is brought against the United States pursuant to this section by a plaintiff or plaintiffs involving a common question of law or fact, the district court shall, to the extent fair and practicable, consolidate similar claims for adjudication in a single proceeding or a limited number of proceedings;

(2) where claims involving a common question of law or fact are brought by a plaintiff or plaintiffs holding alleged rights, titles, or interests issued by a common corporation, corporations, individual, or individuals, the court shall, to the maximum extent fair and practicable, order the consolidation of such claims into a single proceeding or limited number of proceedings; and

(3) during the pendency of any proceeding pursuant to this Act, appeals of any judgment or judgments therefrom, and for sixty days thereafter, the United

States shall not be disturbed in possession or control of any lands involved and no surface or subsurface disturbances to such lands shall be permitted. In the event of a final determination adverse to the United States, the United States nevertheless may retain such possession or control of such lands or any portion thereof as it may elect, upon payment to the person or persons entitled thereto of an amount which upon such election the district court in the same action (after taking into consideration the amount paid by plaintiff or plaintiffs to acquire such right, title, or interest as the court may determine exists) shall determine to be just compensation for such possession or control.

(c) It is the intention of Congress that the transfers of lands authorized and directed by this Act shall be completed no later than six months after the date of enactment of this Act.

(d) If any provision of this Act or the application thereof is held invalid, the remainder of the Act and application thereof, except for the precise provision held invalid, shall not be affected thereby.

(e) The White River National Forest Headquarters and administrative offices in Glenwood Springs, Colorado, are hereby transferred from the jurisdiction of the United States General Services Administration to the jurisdiction of the

Secretary of Agriculture for use for National Forest purposes. If at some future date they shall cease to be used for National Forest purposes they shall automatically revert to the jurisdiction of the General Services Administration.

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II

101st CONGRESS
2d Session

H. R. 2566

IN THE SENATE OF THE UNITED STATES

March 22 (legislative day, January 23), 1990

Received; read twice and referred to the Committee on Energy and Natural Resources

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AN ACT

To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

As used in this Act, the following terms shall have the following meanings:

(1) The term "1921 Act" means the Act of August 23, 1921 (42 Stat. 773), whereby the United States granted to the State of Washington, for the use of the University of Washington for purposes of a biological station and general university research purposes, certain lands comprising a military reservation at San Juan Island, in San Juan County, Washington.

(2) The term "encroached lands" means those portions of the lands granted to the State of Washington by the 1921 Act that are designated as "Encroached Lands" on a map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990, and comprising approximately thirteen acres.

(3) The term "University" means the University of Washington.

(4) The term "the State" means the State of Washington.

(5) The term "the Secretary" means the Secretary of the Interior.

(6) The term "occupants" means the parties who, on March 1, 1990, were listed on the tax records of San Juan County, Washington, as the owners of the encroached lands, and their heirs and assigns.

SEC. 2. EXEMPTION.

Subject to the provisions of section 3(b), the provisions of the 1921 Act relating to the right of the United States to assume control of, hold, use, and occupy the lands granted to the State by the 1921 Act, the provisions of such Act providing for reversion of such lands to the United States, and section 2 of such Act as amended by this Act shall not apply to the encroached lands.

SEC. 3. DISCLAIMER AND CONDITIONS.

(a) Subject to the provisions of subsection (b) of this section, the United States hereby disclaims all right, title, and interest in the encroached lands and, effective one year after the date of enactment of this Act, all right, title, and interest of the United States in such lands shall vest in the University.

(b)(1) Sections 2 and 3 of this Act shall not take effect unless, not later than one year after the date of enactment of this Act, the State and the University have entered into a binding agreement with the Secretary whereby the State and the University agree—

(A) to accept the map referred to section 1(2) as accurate and conclusive and that the University and the State will not attempt to convey or otherwise transfer any portion of the encroached lands to any party or parties other than the occupants; and

(B) to pay to the Secretary, on behalf of the United States, an amount equal to the total amounts that the State and the University receive as consideration for conveyance of some or all of the encroached lands to any of the occupants in excess of reasonable costs incurred by the University and the State incident to such conveyance.

(2) All amounts received by the Secretary pursuant to this subsection shall be retained by the Secretary and, subject to appropriation, shall be used for the management of public lands managed by the Bureau of Land Management and shall remain available until expended.

SEC. 4. AVAILABILITY OF MAP.

The map referred to in section 1(2) shall be available for public inspection in the offices of the Secretary and the State Director of the Bureau of Land Management for the State of Washington, and the Secretary shall transmit copies thereof to the University and to the appropriate officials of the State and of San Juan County, Washington.

SEC. 5. AMENDMENT.

The 1921 Act is hereby amended by the addition at the end thereof of the following new section:

"SEC. 2. (a) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the State of Washington by this Act is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601)), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any cirucumstances, revert to the United States.

"(b) If lands granted or conveyed to the State by this Act shall be used for purposes that the Secretary of the Interior finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State shall be liable to pay to the Secretary of the Interior, on behalf of the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.".

Passed the House of Representatives March 20, 1990.

Attest: DONNALD K. ANDERSON,

Clerk.

II

101ST CONGRESS
2D SESSION

H. R. 3888

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 1990

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To allow a certain parcel of land in Rockingham County, Virginia, to be used for a child care center.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL USE AUTHORIZED.

Subject to the requirements of this Act, the County of Rockingham, Commonwealth of Virginia, hereafter referred to as "the county", is authorized to permit use of the land described in section 3, hereafter referred to as "the land", for purposes of a child care center, notwithstanding the restrictions on use of such land otherwise applicable under the terms of the conveyance of such land to the county by the United States.

SEC. 2. REQUIREMENTS.

(a) A use permitted under this Act shall be confined to buildings in existence as of the date of enactment of this Act (which may be appropriately modified or altered so as to meet other applicable requirements of law) and shall involve fencing or enclosing of no more than 3,500 square feet of the open space portions of the lands, and shall not preclude use of any of the land for other permissible purposes, subject to reasonable restrictions necessary to allow a use authorized under this Act.

(b) The authority of the county under this Act shall be limited to the authorization of use of the land by a child care center serving children without regard to their race, creed, color, national origin, physical or mental disability, or sex, operated by a nonsectarian organization on a nonprofit basis and in compliance with all applicable requirements of the laws of the United States and the Commonwealth of Virginia.

(c) Except as specified in this Act, this Act shall not increase or diminish the authority or responsibility of the county with respect to the land.

(d)(1) If the county, pursuant to this Act, authorizes use of the lands for a child care center, the county shall include information concerning such use in the biennial reports to the Secretary of the Interior required under the terms of the conveyance of the land to the county by the United States and shall also provide a copy of such information to appropriate officials of the United States and the Commonwealth of Virginia responsible for implementation of laws concerning the operation of child care centers.

(2) Any violation of the provisions of this Act shall be deemed to be a breach of the conditions and covenants under which the lands were conveyed to the county by the United States, and shall have the same effect, as provided in the deed whereby the United States conveyed the lands to the county.

SEC. 3. LAND DESCRIPTION.

The land referred to in sections 1 and 2 is that parcel comprised of approximately 3.03 acres of land transferred by the United States on April 11, 1989, to the county of Rockingham, Virginia, in deed book number 953 at page 600, together with improvements thereon.

Passed the House of Representatives, July 10, 1990.

Attest: DONNALD K. ANDERSON,

Clerk.

STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR FOR LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2815

Mr. **PENFOLD**. Shall we just start with Kokapelli?

Senator **WIRTH**. Why do you not just go through everything? We will have your comments on all of the legislation in front of us, if we might.

Mr. **PENFOLD**. All right, sir.

We are pleased to be here. I ask that my prepared statement on S. 2815 be included in the record. In summary, today, we are in opposition to this bill. That opposition is caused primarily by its provisions for Federal cost sharing at a difficult time when we are talking about furloughs and the Bureau is concerned about basic sanitation and safety items that need to be paid for.

So after expressing the concern that we have as far as the cost sharing, I would like to point out that the Moab area is a very rich area in outdoor recreation resources. The Kokapelli bicycle mountain biking trail is a really good example of the kind of resources that are in this area. River running in the Moab areas is quite a popular activity.

Senator **WIRTH**. Kokapelli runs from Grand Junction, as you know, to Moab. We started that on the Colorado side, you know. So it is breaking as a major endeavor on the other side of the border.

Mr. **PENFOLD**. I recognize that Colorado has a big piece of that. As a matter of fact, Colorado has some very interesting mountain biking trails that are beginning to develop there. It is an exciting program.

Part of the BLM flagship program that we are emphasizing now is outdoor recreation. This area has a natural amphitheater that is rather unique and has various opportunities.

I think another thing that is important that is going on there in Utah is that cooperation is really quite excellent between the University of Utah, the Governor's office, State and local governments, and the people who have a dream for this cultural center in the Moab area.

BLM really prides itself on working in these cooperative ventures and has appreciated participating in the conceptual putting together of the various ideas that are presently being developed out there in the Moab area.

BLM has broad authorities at the present time to enter into cooperative agreements, to do things like complete land exchanges and make land available for suitable public-interest projects. We can do this now with our present authorities.

At the same time we are concerned about the cost-sharing provisions of this bill. There is a strong commitment in BLM to work within existing authorities in this Moab area to see a worthwhile project be brought to fruition.

Those are the comments I have on this bill.

[The prepared statement of Mr. Penfold on S. 2815 follows:]

PREPARED STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to present the Department of the Interior's views on S. 2815, a bill to establish a theater in the State of Utah dedicated primarily to promoting western and Native American culture, the performing arts, and related educational programs.

We oppose the enactment of S. 2815. It proposes an inappropriate role for BLM, is not based on a comprehensive study, and proposes insufficient non-federal assistance to make the theater self-supporting.

The area encompassed by the bill is indeed special. It is a segment of a larger area that is endowed with slick rock which distinguishes it from other areas. The slick rock makes excellent bicycle trails. The slick rock also forms a natural amphitheater which can be put to a variety of uses. The area is replete with artifacts and elements of the Anasazi culture.

Moab is the center of a great deal of oil and gas and coal production. It is also becoming a significant recreational area. The area where S. 2815 would place the Kokapelli Theater and other surrounding areas could be the basis for the enhancement of existing multiple uses.

Despite the natural beauty of the area, Federal operation and maintenance of a performing arts center is not appropriate, particularly at a time of heightened concern over the Federal deficit.

We urge the action on S. 2815 be deferred until consideration can be given to a proposal which will address in more detail multiple uses of the significant resources of the area.

This should also include consideration of how any development of the area could be self-supporting. The Department is concerned about the long term funding for the operation of the theater. We believe that funding alternatives should be considered including funding from the cooperative agreement with a theater foundation as described in section 5, or from funds received through the operation of the theater. In times of fiscal austerity, appropriating $6 million just for a theater is not appropriate.

We note the spelling in the bill of "KOKAPELLI". The more usual spelling is "KOKOPELLI".

We oppose the authorization of any funds for this project until such time as the specifics of a multiple use plan for the area are considered and plans are confirmed to make the theater operation self-supporting through non-Federal sources.

This concludes my prepared statement. I will be pleased to answer questions.

Senator WIRTH. If you could summarize your comments on the others. Again, if we could try to hold these down, we would appreciate it.

We will include your statement, of course, in full in the record.

STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR FOR LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2816

Mr. PENFOLD. I would like now to speak to S. 2816. This is a bill that is rather complex. My statement is quite short so I will try to skip through it very quickly.

We cannot support this bill as written although we believe that there are some numbers of citizens out there who need the relief that would be generated by this bill.

In summary, there has been a series of laws over time that created an opportunity for people who might be entitled to land to have titles perfected. For various reasons, that has not taken place and this bill is trying to get that done.

We think that this bill is unusually complex and creates a difficult format for correcting some of the obligations or some of the problems that now exist. Specific problems that we have are outlined in our formal testimony. It is important that these be considered in any redrafting of this bill.

We in the BLM are quite eager to work with the committee to see if we can find satisfactory language to correct these problems that we now see in the bill.

[The prepared statement of Mr. Penfold on S. 2816 follows:]

SEP 26 1990

STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 2816, A BILL "TO DISCLAIM ALL RIGHT, TITLE, AND INTEREST OF THE UNITED STATES IN AND TO CERTAIN PRIVATE LANDS CONDITIONALLY RELINQUISHED TO THE UNITED STATES UNDER THE ACT OF JUNE 4, 1897 (30 STAT. 11, 36), AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear here today to discuss S. 2816, a bill relating to in-lieu selections for lands conveyed to the United States.

We cannot support S. 2816 as written.

S. 2816 attempts to provide equitable relief for a relatively small number of dormant land claim cases. However, it is a complicated solution that does not solve the problems it addresses. It is too general and generous in giving away Federal land, and it would create many new and unwanted inholdings. It would cause us to disclaim Federal lands for which there are no other valid claims. It is too complex in its execution, and it would impose unnecessary, burdensome, new workloads on the two Departments involved.

The Sisk Act was intended to perfect title in the United States to all the uncommitted base lands remaining when the Act was passed in 1960. It is possible that there are some base tracts administered by the Bureau of Land Management (BLM) which should not, in equity, be retained by the United States. Legislative authority is necessary to correct such titles. That is the purpose of S. 2816. However, it does not address possible liability that may attach to some of the many parcels of lands involved. It is too general in its relinquishment of interests, too complex in its timing of actions required of the Secretary. It would, by law, direct us to use the wrong type of conveyance and instrument to make the intended transfers.

With respect to Section 2 of S. 2816, we have these specific comments:

1) One serious problem with S. 2816 is that it deals with government lands as if they were private property; legislating the wrong type of conveyance document to try to clear alleged clouded titles. Lands that were identified in the Sisk Act, by operation of law, are now property of the United States. As government-owned property, title to these properties cannot be transferred by a passive disclaimer, it must be transferred by an affirmative document such as a deed.

2) Section 2(b) requires that the list of base lands be prepared within 6 months. We have already prepared a list of those BLM lands that we believe are base lands. It is not clear whether that list is acceptable or more work would need to be done. A copy of our latest list is attached to this statement.

Section 2(b) should be amended to clarify that the Secretary of the Interior and the Secretary of Agriculture should separately be responsible for preparation of the list of base lands under their respective jurisdictions.

The Act of 1897 specified that a valid application for an in-lieu selection was one prerequisite for receiving in-lieu lands. Section 2(b) should be amended to require that a list be prepared of base lands where applications were actually made, not the much larger list representing those parcels that were "conditionally relinquished" to the United States. The latter would require a complicated search of all land records in all courthouses throughout the western United States. The suggested change would produce a more accurate list of valid claims and could be done from Federal records readily accessible to our staffs.

We presently have sufficient authority to issue disclaimers of interest for parcels for which the United States has no right, title, or interest.

3) No mention is made in this proposal for the protection of valid existing rights on the Federal base lands. These rights could be Federal rights which should be reserved or third-party rights which a disclaimer or quit claim deed would be made subject to.

4) Section 2(c)(2) authorizes the Secretary to acquire by purchase, gift or exchange, the nationally significant lands identified in subsection (1) of that section, even if such lands would not fall under the BLM jurisdiction. This subsection should be amended to clarify that each concerned Secretary is authorized to make such exchanges only from lands under their respective jurisdictions.

5) Section 2(c)(2) provides for condemnation within 2 years of enactment of the Act. This timeframe would be difficult to meet considering that within the 2 years the list must be prepared; appraisals performed; negotiations attempted with a seller; and a determination made that a willing seller cannot be identified or a mutually acceptable purchase agreement negotiated. Failing to meet that deadline, the Secretary is required to issue a document of disclaimer of title regardless of how important continued Federal ownership may be.

6) Section 2(d) should provide that the filing of the document of disclaimer shall be done by the person or entity accepting the benefits of this Act. The Federal Government should not pay for and record the disclaimer for the private party.

7) Section 2(e), relating to the waiver of claims against the United States, should be more precisely written to provide sovereign immunity against any claims for any revenues that may have been received by the United States prior to reconveyance or the disclaimer of Federal interest in the base land.

8) There is no provision protecting the United States from liability for contamination that may have occurred prior to the disclaimer of interest that the Act legislates.

9) The timeframes in sections 2(f) and 2(g) are confusing. Section 2(f) says that effective on the date on which the list is prepared under section 2(h) the Act of July 6, 1960 shall not apply to any base lands on the list. However, section 2(g) says the section takes effect 30 days after the Secretary submits the list to the appropriate Committees of Congress.

11) S. 2816 puts the burden of proof for a claim on the Secretary. This puts a financial and administrative burden on the wrong party. The person seeking the benefit of the bill should be required to come forward and apply for the relief that the bill would grant and to submit sufficient evidence to support a claim of ownership superior to what was established in the United States by the Sisk Act. In addition, there should be a cutoff period for filing applications under the Act.

In summary, we support equitable relief for claimants whose histories match the intent of this bill. However, our research indicates that there are very few valid claims remaining. It is clear to us that each Forest-Lieu selection case has its own unique facts and circumstances, and each claim should be adjudicated on its own merits.

This concludes my prepared statement. I will be pleased to answer questions.

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Date

Legend
C- Cancelled or Rejected
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Deed to the U.S. Recorded in All BLM County, State of Idaho & Colorado

Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner,
								BLM						
Idaho	Date	Vol	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	If Known.
Bonner No. Pacific RR *	9-20-00	4	110	59N	4W	1 NESE - S1/2SE NW1/4 - L 1 & 2	List 26 & 29 C-6-29-03	Pat 21 Only	P 1969	P	NA	398	398	Diamond Lands Corp.
" " "	1-8-01	5	14 & 15	59N	4W	15 W2NW-SENW-NENE	None	Pat Only	"	LS(1) 434	" "	160	160	Pack River Management
Boundary " "	2-4-02	5	152	62N	3W	13 S2NW	C-7935	LS Canc	"	Pat 27	"	80	80	Disclaimer W. R. Miller
" "	1900	3	124 & 125	63N	3W	17 N1/2	C-6285 C-+6286	LS Canc	" "	LS6285 +6286	" "	320	320	Disclaimer Burlington Northern RR
" "	1900	3	128 & 132	63N	3W	19 W2NW-SE1/4	None	Pat Only	US-NWW P-SE1/4	Pat 27	" "	240	240	" "
" "	1900	3	141	63N	3W	31 NW1/4	None	Pat Only	P- 1969	Pat 27	"	160	160	" "
Bonner " "	3-21-02	5	29	63N	4W	11 NWNE	G-6375	LS Canc	"	Pat 27	"	40	40	Disclaimer " "
COLORADO												1,518	1,518	Totals - Idaho
El Paso W. E. Moses	9-20-01	335	8	11S	67W	5 N3/4 of NWNW	C-5553	C-5553 C-6-18-04		Pat Only	"	32	-0-	B. K. Herndon has QCD Sold County for taxes & other claimants.
												32	-0-	Total - Colorado

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Deed to the U.S.
Recorded in ______ BLM County, State of Wyoming-South Dakota New Mexico - Utah

Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present Owner, If Known
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
												None		
WYOMING														
SOUTH DAKOTA														
Custer V. Vallenthine	3-2-05	7	87	3S	6E	31 SENW	None	Pat Only		Pat 2631		40	40	State Park Board
" V. Vallenthine	3-2-05	7	86	3S	6E	32 NENW	C-13520	C- 1-1-06		Pat 2830		40	40	State Park Board
												80	80	Totals South Dakota
												1,518	1,398	Totals - Idaho
NEW MEXICO														
Lincoln W.E. Moses LS&R Co.	2-10-05	W	237	8S	15E	27 NWSW	None	Pat Only		Rec 2-10-05		40	-0-	
" Jefferson D. Thomas	9-13-04	W	126	7S	14E	17 E2SSW	None	Pat Only		Pat 550		80	-0-	
												120	-0-	Totals - New Mexico
ARIZONA												None		
UTAH												None		

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Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner, If Known.
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Fresno Hugh C. Woods	1900	247	174	11S	30E	16 SW1/4SE1/4, NW1/4SW1/4	C-3854	C	P	US	(1)	80	-0-	Hayes has QCD for part
Tulare F. A. Hyde	2-26-00	98	42	14S	32E	36 NW1/4NE1/4	C-2057 C-4249	P		P	(1)	40	-0-	In Sequoia Nat'l Park Hernden has QCD
" Jacob H. Cook	1902	107	298	22S	30F	31 Lot 4 (Tr. 37)	None	P	P	P	-	27	-0-	
E. O. Miller	1902	103	473	23S	30E	16 SW1/4NW1/2	None	P	P	P	-	40	-0-	Hayes has QCD/for 20%
Kerr F. S. Fugitt	1902	146	372	26S	33E	11 N1/2S1/2SW1/4	None	P	P	P	-	40	-0-	" "
" H. M. Hamilton	1900	104	885	26S	33E	29 Por. of E1/2NW1/4	C-4064	C	P	US	-	45	-0-	Masonic Homes
" F. A. Hyde & Co.	1900	107	271	26S	34E	1 NW1/4SW1/4	None	P	P	P	-	40	-0-	Ranch Development
" C. E. Glover	1903	156	437 & 438	27S	37E	36 SW1/4, W1/2SE1/4	None	P	P	P	-	240	240	Frontier Mining & Engineering Co.
" F. A. Hyde	1899	96	1	27S	33E	16 E1/2SW1/4	C-4923	C	P	US	-	80	-0-	Herndon has QCD from Hyde
" Marcus Hart	1901	125	380	28S	35E	16 S1/2SW1/4	C-4610	C	P	US	-	80	80	Western Lands
Mono J. C. Irwin	1902	N	494	5S	30E	25 NW1/4SE1/4 '	C-4912	C	P	US	-	40	-0-	B.K.Herndon&(Disclaimer) Mrs. Robert Edwards
Inyo A. W. Foster	1900	E-1	50	21S	37E	16 S1/2NE1/4	Blackfoot 022394	C	P	P	-	80	-0-	
Santa Barbara J. D. Ackerman	1899	68	622	11N	28W	31 Lots 1 & 2	C-3101	C	P	P		44	44	Richard Webb

(1) Sequoia & Kings Canyon Nat'l Parks

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								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Los Angeles J. B. Stoddard	1899	1339	152	8N	18W	20 SE1/4	C-2019	C	P	P	-	160	160	State of California
" E. M. Durant	1903	1897	264	7N	14W	5 W1/2 of Lot 2, SW1/4NE1/4	None	P	P	P	-	77	77	33 owners
" E. M. Durant	1903	"	"	7N	15W	5 SW1/4NW1/4	None	P	P	P	-	40	40	Forest High Lands
" E. M. Durant	1903	1897	264	7N	15W	3 S1/2N1/2	None	P	P	P	-	160	160	A.C. & Shirley Warnack
" H. A. Cowen	1904	2009	16	7N	15W	5 NE1/4NE1/4	C-9683	C	P	P	-	40	40	R. W. McCorkell
" Alfred A. Vickery	1903	unknown		5N	10W	36 All	C-8914	C	P	P	-	640	640	J. S. Murdock & 20 other owners
" Wm. G. Goslin	1899	1324	42	5N	12W	30 Lot 1 & S1/2 of Lot 2 of SW1/4	C-2601	C	P	P	-	121	121	(Disclaimer) Lester Hall, et al.
" C. A. Johnson	1900	1381	319	5N	13W	20 N1/2SW1/4	C-4357	C	P	P	-	80	80	Bernice Sir Kegian
" Cora Graybill	1900	1340	185	5N	13W	22 NE1/4SE1/4	None	P	P	P	-	40	40	Freeway 8.8A Perriseau Trust 31.2 A.
" John Woods	1900	1340	186	5N	13W	22 SE1/4SE1/4	None	P	P	P	-	40	40	Jack D. McEwen
" Isaac Liebes	Unknown			5N	15W	36 SW1/4	C-3030	C	P	P	-	160	160	So. Calif. Edison A. G. Haddad
Gabino Camichio	1901	1507	242	4N	13W	7 W1/2SE1/4SE1/4; NE1/4SW1/4SE1/4	None	P	P	P	-	30	30	2 owners
W. C. Burgstrom	1902	1562	146	4N	15W	30 Lots 1 & 2	None	P	P	P		72	72	Ersland Training Center Corp. - 57 a.

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Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner, If Known.
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Los Angeles E. M. Durant	1903	1897	264	4N	16W	11 Lots 1, 2 & 3	None	P	P	P	-	61	61	Ersland training Center
" Chas Overlook	1901	1435	27	4N	16W	12 NE1/4NE1/4; NW1/4SW1/4	None	P	P	P	-	80	80	Approx. 110 owners
" E. M. Durant	1903	1897	264	4N	16W	25 Lots 1,2,3, & 4	None	P	P	P	-	14	14	Lloyd Sedlacek, et., al.
" Alice M. Hall	1902	2093	93	4N	17W	16 NW1/4	None	P	P	P	-	160	160	Jeanne Gallagher
Big Blackfoot " Milling	1899	1332	79	4N	10W	2 Lot 2 of NW1/4	C-2327	C	P	US	-	80	80	Walter E. Olsen
" L. A. Grimminger	1901	2154	251	4N	15W	6 NW1/4SE1/4; SW1/4SW1/4	C-13445	C	P	P	-	80	80	4 owners
" J. Furniwill	1902	1577	215	4N	15W	19 Lot 1	C-8048	C	P	P	-	37	37	L.A. Water & Power & 6 others
" John F. Campbell	1902	1572	280	4N	15W	19 W1/2SENE,N1/2NE, N1/2SWNE	None	C	P	P	-	120	120	30 owners
" Wm. Erwin	1902	1548	267	4N	15W	20 N1/2S1/2SE1/4	C-5163	P	P	P	-	40	40	Dolores McMurray, et. al.
" Lewis A. Black	1902	2215	288	4N	15W	31 SE1/4NW1/4	C-8673	C	P	P	-	36	36	(Disclaimer) Mobil Oil Corp.
" Lewis A Black	1901	311	499	9S	2E	15 Lot 3	C-7472	C		US	-	45	45	"

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Deed to the U.S.
Recorded in Snobomish & Lewis BLM County, State of Washington

Assessed & Unassessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner, If Known.
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Snohomish A. J. Hazeltine	1900	54	232	32N	9E	8 Most of SE of SE	C-5388	C- 8-8-05		P	-	30	30	
" " "	1900	54	232	32N	9E	9		"		P				Brazier Forest Products
Lewis Marion Edwards	11-5-01	62	350	12N	7E	15 Lot 6	None	Pat Only		P		2	2	John W. Coucoules
" Northern Pacific	1-24-01	NP Deed	7767	12	7E	13 Lot 2	"	"		P		2	2	Burlington Northern RR
" "	1-14-01	53	221	12N	7E	7 SESE 19Lot 1	C-4286	C- 7-11-03		P		80	80	26 owners
" " "	1-14-01	NP Deed	7772	12N	8E	1 Lot 1	None	Pat Only		P		13	13	
" " "	1-14-01	NP Deed	7777	12N	8E	11 Lot 5	"	"		P		10	10	Richard G. Utley
" " "	1-14-01	NP Deed	7782	12N	8E	17 Lot 12	"	"		P		14	14	Dorothy E. Johnson

The above data has been complied from General Land Office Archives case files,
from Bureau of Land Management records and from local County, State and Title Company records.

* None = No Appn. was filed with GLO prior to 3/3/05.

INVENTORY OF BASE LANDS OFFERED THE UNITED STATES, BUT THE UNTIED STATES
DID NOT ACCEPT TITLE, INSTEAD THEY WERE CANCELLED, REJECTED,
WITHDRAWN OR INCOMPLETE FROM FOREST LIEU SELECTION EXCHANGE, BY THE
ACTS OF: June 4, 1987 (30 Stat. 11-36), or
March 3, 1905 (33 Stat. 1264), or
August 5, 1955 (69 Stat. 534), Section 4.

Page 7
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Date

Legend
C- Cancelled or Rejected
P- Private Land
US- U.S. Land, per.

Deed to the U.S.
Recorded in Mason & Clallam BLM County, State of Washington

Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner, If Known.
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Mason Jacob Lochbaum	5-10-00	1	572	21N	5W	34 E1/2SW	C-2680	C- 1-30-04		US		80	80	Simpson Timber Co.
" Charles Borgenson	5-10-00	1	580	21N	5W	34 SE1/4	C-2654	C- 2-20-04		P		160	160	" "
" Harold Waltz	9-12-00	6	431	21N	6W	33 S1/2SW	C-3128	C- 6-6-03		P		80	80	" "
" F. Stabenfeldt	6-18-00	1	595	21N	5W	32 SESW	C-2666	C- IL-1961		S		40	40	State of Washington
Callam James Kerr	8-7-99	55	97	28N	13W	7 Lot 7	C-797	C- 9-25-01		P		13	13	Joseph Pavel
" Gideon McDonald	11-1-99	55	286	28N	13W	17 SENE	C-1347	C- 11-15-00		P		40	40	8 owners
" Mary Coffin	3-28-00	57	188	28N	14W	24 Lot 1	C-2361	C- 7-30-04		P		15	15	Harry E. Coventon
" W. J. Williams	3-5-00	58	228	28N	14W	8 SESE	C-2307	C- 8-20-03		P		40	40	ITT Rayonier
" Virgil E. Rice	12-22-00	60	308	28N	14W	34 E1/2NE	C-1429	C- 8-8-04		P		80	80	" "
" Fred Pape	9-8-99	56	86	28N	14W	15 Lots 4 & 5	C-1930 C-923	Canc		US		49	49	Milwaukee Land Co.
" Carl E. Clemens	9-19-99	56	295	28N	14W	15 Lot 3	C-1265	C- 10-17-03		P		12	12	Bloedel Timberlands Dev.
" " "	9-19-99	56	295	28N	14W	10 Lot 6	"	"		P		4	4	State Bd. of Forestry
" " "	9-8-99	56	86	28N	14W	10 NWSW-SWSE-Lot 4	"	"		P		112	112	Bloedel Timberland Dev.
												1,316	1,316	Sub Totals

The above data has been compiled from General Land Office Archives case files, from Bureau of Land Management records and from local County, State and Title Company records.

* None = No Appn. was filed with GLO prior to 3/3/05.

INVENTORY OF BASE LANDS OFFERED THE [illegible]TED STATES, BUT THE UNTIED STATES
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Page 8
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Date

Legend
C- Cancelled or Rejected
P- Private Land
US- U.S. Land, per.

Deed to the U.S. BLM
Recorded in Clallam County, State of Washington

Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner, If Known.
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	
Clallam Herbert Upper	2-21-00	57	109	28N	14W	30 NWSE	C-2286	C- 6-18-03		P		40	40	State Bd. of Forestry
" Charles Cobb	12-4-99	3	28	28N	14W	20 SENE 21 SWNW	C-2679	C- 12-24-00		P		80	80	" "
" Carl Clemens	9-19-99	56	295	28N	14W	10 Lot 5	C-1265	C- 107703		P		34	34	Chicago Milwaukee & St. Paul RR "
" W. A. Clark	5-4-00	57	341	28N	15W	13 S1/2SW	C-2760	Pat Only		P		80	80	ITT Rayonier
" "	5-4-00	57	"	"	"	14 W1/2NE-S1/2SW	"	"		P		160	160	" "
" " "	5-4-00	"	"	"	"	24 N1/2NE-SENE NESE	"	"		P		160	160	" "
" " "	5-4-00	"	"	29N	4W	12 SWSE-SESW 13 NWNE-NENW	"	"		P		160	160	" "
" Herbert Upper	2-21-00	57	109	29N	3W	7 W1/2SE-SESE	C-2277	C- 6-18-03		P		120	120	State Board of Forestry
" Jacob Kintz	9-27-99	55	130	30N	12W	22 NWNW	C-1271	C- 2-25-04		P		40	40	" "
" " "	2-21-00	57	109	30N	12W	21 E1/2NE	"	"		P		80	80	" "
" Jermiah Collins	9-9-99	2	270	30N	13W	25 Lot 4	C-2491	C- 9-24-04		P		8	8	ITT Rayonier
" " "	9-9-99	"	"	30N	13W	26 SENE	C-6525	C- 9-24-04		P		40	40	" "
" Virgil Rice	6-3-00	60	89	30N	14W	5 SESE 8 E1/2NE	C-1431 C-13510	C12-4-03 C10-24-06		P		120	120	" " (Disclaimer)
												2,118	2,118	Sub Totals

The above data has been complied from General Land Office Archives case files, from Bureau of Land Management records and from local County, State and Title Company records.

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Date

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Deed to the U.S. BLM
Recorded in Clallam County, State of Washington

Not Currently being assessed

Grantor	Deed recorded to the U.S.A			Land Description			G.L.O. Selection Number	Gov't Records Show				Acreage		Present owner,
								BLM						
	Date	Vol.	Pg.	Twp.	Rng.	Section and Subdivision		WOTB	STB	MTP	FS	Total	Assd.	If Known.
Clallam Virgil Rice	6-3-00	60	89	30N	14W	9 Lot 4	C-1431 C-13510	C12-4-03 C10-24-06		P		39	39	(Disclaimer) ITT Rayonier
" William Caldwell	10-29-01	59	207	31N	15W	35 SWNE	C-3335	C- 12-16-04		P		40	40	(Disclaimer) Mays Bros Logging
Yakima Northern Pacific	12-23-04	13	287 292	12N	14E	5 All	None	Pat Only		P		521	521	N Pac
												2,718	2,718	Total - Washington
												7,677	7,031	Total

The above data has been compiled from General Land Office Archives case files, from Bureau of Land Management records and from local County, State and Title Company records.

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STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR FOR LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON H.R. 2566

Mr. PENFOLD. Now I move to H.R. 2566.

This is a bill that has to do with land problems in the San Juan Island area in San Juan County in the State of Washington. Again, this bill is warranted, but needs some corrections and some modification before we can fully support it.

The problem here is a land problem that is generated from an old marine sciences laboratory, where the Federal Government provided land for the operation of this facility with a reverter clause that provided that any time the land was not used for that facility, it would revert back to the Federal Government.

Accidental surveys or erroneous surveys were done by the private sector. They resulted in private people on some 14 home sites ending up on some of the laboratory land resulting in a contested situation.

The BLM would like to see this bill authorize a resurvey of this land. We believe the survey should be paid for by the private citizens and the land conveyed to the State of Washington and the University thereafter being transferred to the citizens.

Again, we have provisions that we identify in our written testimony that we think are important for the committee to pay attention to. I look forward to working with the committee in straightening out those problems.

With those comments, I have covered three bills rather rapidly, sir.

[The prepared statement of Mr. Penfold on H.R. 2566 follows:]

PREPARED STATEMENT OF MICHAEL PENFOLD, ASSISTANT DIRECTOR, LAND AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to discuss H.R. 2566.

The Bureau of Land Management (BLM) has no objection to the enactment of H.R. 2566 if it is amended as we suggest. A summary of the bill is attached to the statement.

Under the Act of August 23, 1921, Congress granted to the University of Washington certain properties in San Juan County, Washington, for the operation of a marine sciences laboratory. The Act contained a reverter to the United States, should the lands be used for any purpose other than those originally specified in the Act.

As a result of an erroneous private survey for a residential subdivision, there are now 14 or more individual parcels of lands, encompassing approximately 13 acres, encroaching along the west boundary of the land patented to the University of Washington that are occupied by persons who claim ownership. As the land is not being used for the purposes set out in the 1921 Act, legal title to the land may have reverted to the United States, even though the change in use was an unintentional violation of the provisions of the 1921 Act. The BLM has been working with the University for several years to try to resolve the problem and has not issued a Decision of Divestiture to formally notify the State of the reversion.

We recognize that when the House passed H.R. 2566, it distinguished the lands covered by H.R. 2566 as "encroached lands" identified on "a map", in order to avoid the estimated $24,000 cost of a BLM resurvey. However, the map referred to in the bill does not exist and cannot be prepared without first completing a dependent resurvey of those lines necessary to identify the actual boundaries of the area that is called "encroached land". Without a dependent resurvey, the United States would be disclaiming title to an undefined area which would still leave the problem of clouded title unresolved. A preliminary investigation of the area has been conducted, but there is insufficient information and evidence of the earlier surveys available to prepare a document that could transfer title to the lands. If the intent of the bill is to be achieved, it is imperative that a dependent resurvey of the area be completed. The end product of the dependent resurvey will be a cadastral survey plat that is officially approved and filed in the Federal records and will be the legal document from which land can be identified and conveyed.

For this reason, we recommend that references to the map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990 be deleted from the bill. Instead, the bill should refer to a "Cadastral Survey plat based upon a BLM Dependent Resurvey".

The bill should provide for the claimants to pay for the survey. In addition, the bill makes no provision for payment of administrative costs. We urge that a provision be added to require such payment. As we mentioned in testimony before the House Interior Subcommittee on National Parks and Public Lands, unless the bill is so amended, the Administration will oppose its enactment.

Finally, we strongly support section 5 of the bill which would prevent any lands that are contaminated with hazardous materials from reverting to the United States.

This concludes my statement. I will be pleased to answer any questions you may have.

[Attachment.]

SUMMARY OF H.R. 2566, AN ACT

Section 1 would provide definitions for a number of terms used in the bill. One of those terms is "encroached lands", defined as those portions of the lands granted to the State of Washington by the Act of August 23, 1921, that are designated as "Encroached Lands" on a map entitled "Encroachments on Research Station Lands, San Juan Island, Washington" dated March 1990, and comprising approximately 13 acres.

Section 2 would exempt the encroached lands from the provisions of the 1921 Act relating to the right of the United States to reclaim the lands if they are needed for military purposes, from the reversionary interest clause in the 1921 Act, and from the provisions related to hazardous materials which would be added to the 1921 Act by section 5 of H.R. 2566.

Section 3(a) would provide that the United States disclaims all right, title, and interest in the encroached lands, and would provide that all right, title, and interest of the United States in such lands shall vest in the University of Washington one year after the date of enactment of the bill.

Section 3(b) would provide that the exemptions and vesting of the lands could not take effect unless, within 1 year after enactment of H.R. 2566, the State and the University have entered into a binding agreement with the Secretary of the Interior regarding the lands. Under that agreement, the State and the University would have to agree to accept as accurate and conclusive the map referred to in the bill; not to attempt to convey or otherwise transfer the encroached lands to any party other than the occupants; and to pay the Secretary any amounts received as consideration for conveyance of some or all of the encroached land in excess of reasonable costs incurred by the University and the State incident to conveying the land. The Secretary would be required to retain all such payments and, subject to appropriation, use the monies for the management of public lands managed by the Bureau of Land Management.

Section 4 would require the map of the encroached lands to be available for public inspection in the offices of the Secretary of the Interior and the BLM State Director for the State of Washington. The Secretary would be required to transmit copies of the map to the University and to appropriate officials of the State and of San Juan County, Washington.

Section 5 would amend the 1921 Act to provide that, notwithstanding any other provision of that Act, any land granted or conveyed to the State by this Act that is or shall become contaminated with hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, or that has been used for purposes that the Secretary finds may result in the disposal, placement or release of any hazardous substance shall not, under any circumstances, revert to the United States. In such instances, the State would be liable to pay the Secretary the fair market value of the land, including the value of any improvements as of the date of conversion of the land to the nonconforming purpose. The Secretary would be required to retain all such payments and use the moneys for the management of public lands.

Senator **Wirth**. We appreciate it very much. Thank you very much.

Mr. Walters.

STATEMENT OF WILLIAM C. WALTERS, ASSISTANT DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. **Walters**. I will try to be just as brief, sir. Thank you for the opportunity.

I am testifying on H.R. 3833, which would allow a 3-acre parcel of land in Rockingham County, Virginia, to be used as a child care center.

Normally, as our policy, we would oppose this kind of special legislation that would permit Federal surplus land transferred at no cost for recreation purposes to be used for a different purpose. However, in this case we think the use of a small building and a play yard for a day-care center certainly will not destroy the open-space character of the land.

Therefore, we do not have any objection to H.R. 3888.

[The prepared statement of Mr. Walters follows:]

Prepared Statement of William C. Walters, Assistant Director, National Park Service, Department of the Interior

Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with the views of the Department of the Interior on this legislation.

We have no objection to the enactment of H.R. 3888.

H.R. 3888 would allow a 3-acre parcel of land in Rockingham County, Virginia, to be used as a child care center. The land in question, a former Federal surplus property, was transferred to the County in April 1989 by the Department of the Interior under the Federal Property and Administrative Services Act of 1949, as amended, public benefit discount program for use in perpetuity for park and recreation purposes. Under terms of the transfer, this property was to be used as a local park, and one building was to be upgraded for recreation.

In August 1989 Rockingham County and the Plains Area Daycare Committee requested our approval to remodel the 1800 square-foot building on the property and use it and a portion of the land as a child-care center. Since the property was transferred to the County only for park and recreation purposes, we could not, under the law authorizing the transfer, approve its use for other purposes.

As a general policy, we would normally oppose special legislation that would permit Federal surplus land transferred at no cost for recreation purposes to be used for a different purpose. We want to promote and foster park and recreation use, not curtail it. However, the use of this small building and a play yard for a child-care center will not destroy the open-space character of the land, and it will serve a public need that the County has indicated is important.

Technically a child-care center may not be recreation use, because the building and yard will not be open to the general public during the hours that the center is in operation. Nevertheless, the center is not inconsistent with recreation use in terms of its effect on the resource. Therefore, if the Congress determines that the center should be allowed on this property we would not object to it.

Mr. Chairman, under the Federal Property Act, surplus land transferred for park and recreation purposes must be used for those purposes or it reverts to the Federal Government. The National Park Service has the responsibility for assuring compliance with the reversionary provisions in the deed. Parks are our business, but child-care centers are not. We note that subsection 2(d) of the bill would require the county to furnish information on the child care center bi-annually not only to the National Park Service but to appropriate Federal and State officials who are concerned with laws governing child-care centers. We believe this provision is appropriate.

This concludes my prepared remarks, Mr. Chairman. I will be pleased to respond to any questions you may have.

Senator **Wirth**. That is terrific, Mr. Walters. Any other comments from you on any other legislation?

Mr. **Walters**. No, that is the only one.

Senator **Wirth**. Do you want to leave?

Mr. **Walters**. If you like.

Senator **Wirth**. Go down and do some real work?

Thank you very much, Mr. Walters. Thank you very much sir. I appreciate it.

Mr. Patrick Hayes.

STATEMENT OF PATRICK A. HAYES, DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. **Hayes**. Mr. Chairman and members of the committee, I am pleased to present the administration's views on section 6 of S. 2543, which would provide for a study on the treatment of Alaskan natives living in certain communities that did not obtain the opportunity to create for-profit corporations under the Alaska Native Claims Settlement Act.

I have a prepared statement which I have submitted for the record and will summarize the statement at this time.

We would oppose enactment of section 6 of S. 2543. This position is consistent with the testimony we presented before the House Interior and Insular Affairs Committee on July 31, 1990, on H.R. 5092, a bill which is similar to section 6 of S. 2543.

We are aware of the concerns of the native residents of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell. We believe they have been treated equitably as to fund distribution under the Alaskan Native Claims Settlement Act. They all have been enrolled at-large to the appropriate regional corporations and have received their pro-rated share of the Alaska Native Fund directly in the same amount and in the same manner that their village would have received had it been determined eligible.

Likewise, these residents have received their fair share, no more, no less than any other recipient of this subsection 7(i), redistribution of monies based on their at-large membership in the Alaska Native Regional Corporations.

I would like at this time to correct an apparent inconsistency provided in our testimony on H.R. 5092, where we stated that based on a limited review of Bureau records, Haines and Tenakee were determined ineligible because they were a majority non-native. We believe that while all five of these villages would have been ineligible under 43 U.S.C. 1610(b)(3) because a majority of their residents were non-native based on Bureau records, the final departmental decision with respect to eligibility was not for that reason.

In fact, the non-native majority issue was not reached at all. Both villages were determined ineligible because they were not listed in section 16 of the Alaska Native Claims Settlement Act. The decisions I refer to are those of the Alaska Native Claims Appeal Board, which can be provided for the record, if you would like.

In the course of consideration leading to the passage of the Alaska Native Claim Settlement Act, Congress considered treating unlisted Southeast Alaska villages the same as the listed villages, just as they did for villages outside Southeast in 43 U.S.C. 1610(b)(3).

However, in the end Congress chose not to provide for that opportunity. We believe it is inappropriate now, after 20 years, to attempt to review that history and arrive at a judgment of equity on those actions.

We are greatly concerned that the bill would establish a bad precedent by opening the door for other non-native communities to request a similar study claiming that they now, 20 years later, have a significant native population with a separate historical identity.

The Alaska Native Claims Settlement Act was intended to settle all Alaska native claims. The compromises agreed to in achieving that settlement should not be disturbed.

We would be required to perform an extensive review and analysis and then make an equity determination. If inequity is found then we would be required to identify lands, assets, and funding to remedy the inequity, followed by legislative recommendations necessary to implement those findings.

The entire study is supposed to be accomplished by January 1, 1991, which is about 3 months away at this time, at some undetermined cost and with no identified funding. It is doubtful that any study could be completed within that time frame. We testified earlier that the time frame on H.R. 5092 was too short when it provided until June 1, 1991, to complete the work needed.

Despite all of the above, and if Congress feels that some study is needed, we would be willing to consider a more limited review of the administrative records and legislative history for the purpose of comparing how these five communities and others were listed and treated under the Alaska Native Claims Settlement Act and report our findings to Congress.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

[The prepared statement of Mr. Hayes follows:]

PREPARED STATEMENT OF PATRICK A. HAYES, DEPUTY TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr Chairman and members of the Committee, I am pleased to present the Administration's views on Section 6 of S. 2543, which provides for a study on the just and equitable treatment of Alaska Natives living in certain communities that did not obtain the opportunity to create for-profit corporations under the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.).

We oppose enactment of Section 6 of S. 2543. This position is consistent with the testimony we presented before the House Interior and Insular Affairs Committee on July 31, 1990, on H.R. 5092, a bill which is similar to Section 6 of S. 2543.

We appreciate the concerns of the Native residents of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell. However, we believe the individuals in the named communities have been treated equitably as to fund distribution under ANCSA. Each of the individuals in the named communities were enrolled at-large to the appropriate Regional Corporations and received their prorated share of the Alaska Native fund directly in the same amount and in the same manner that their village would have received had it been determined eligible. Likewise, these residents have received their fair share, no more, no less than any other recipient of the subsection 7(i) redistribution of monies based on their at-large membership in the Alaska Native Regional Corporations (43 U.S.C. 1606(i)).

In the Administration's testimony on H.R. 5092, we stated that based on a limited review of Bureau records, Haines and Tenakee were determined ineligible under 43 U.S.C. 1610(b)(3) because they were a majority non-Native. Upon further review, we wish to correct what may appear as an inconsistency. While all five of these villages would have been ineligible under 43 U.S.C. 1610(b)(3), because a majority of the residents were non-Native based on Bureau records, the final Departmental decision with respect to eligibility on Tenakee was not for that reason. In the Tenakee decision, as well as in the Ketchikan decision, both villages were determined ineligible because they were not listed in Section 16 of ANCSA (43 U.S.C. 1615). The decisions referred to are those of the Alaska Native Claims Appeal Board (ANCAB) in VE 74-60 and LS 77-33, which can be provided for the record upon request.

Those decisions, in reviewing the legislative history (see Senate Report 92-405, p. 160) state that Congress considered treating unlisted Southeast Alaska villages the same as the listed villages (just as they did for villages outside Southeast in 43 U.S.C. 1610(b)(3). Since Congress considered this once and chose not to provide for that opportunity (see Senate Report 92-581, p. 44), we believe it is inappropriate now, after twenty years, to attempt to review that history and arrive at a judgment of equity on those actions.

While section 6 of S. 2543 limits the study to five locations in Alaska, we are concerned that the bill would establish a precedent, thus opening the door for other non-Native communities to request a similar study claiming that they now, 20 years later, have a significant Native population with a separate historical identity. The ANCSA was intended to settle all Alaska Native claims. The compromises agreed to in achieving that settlement should not be disturbed.

The legislation if enacted, would require an extensive review and analysis in order to make an equity determination. If an inequity is determined then the bill requires that the Department identify lands, assets, and funding to remedy the inequity followed by legislative recommendations necessary to implement these findings. The entire study is supposed to be accomplished by January 1, 1991 (less than four months away), at an undetermined cost with no identified funding. It is doubtful that any study could be completed within that timeframe. We testified earlier that the timeframe on H.R. 5092 was too short when it provided until June 1, 1991, to complete the work needed.

If Congress feels a study is truly needed, we would be willing to consider a more limited review of the administrative records and legislative history for the purpose of comparing how these five communities and others were listed and treated under ANCSA, and report our findings to Congress.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

Senator WIRTH. We would like to receive from you, Mr. Hayes, the Bureau's quite specific comments following up on the suggestion you had at the end of your testimony. If we could get that from you, that you would be willing to consider a different kind of review. We would like to have your thoughts on what that should include.

Mr. HAYES. You are looking for a written supplement to the record?

Senator WIRTH. That would be terrific. You made the suggestion that you would be happy to do it. We are taking you up on your good offer.

Mr. HAYES. We would be happy to do that.

[The information referred to was not received.]

Senator WIRTH. If we could, Mr. Penfold, we would like to get from you your comments on the magnitude of the in lieu selections that are still unresolved. Could we get that for the record?

Mr. PENFOLD. Yes, sir, we would be happy to provide that.

Senator WIRTH. We would also like to have some notion from you of your reaction to what I understand is the alternative language going through the House of Representatives. That would be very helpful.

Mr. PENFOLD. Yes, sir.

[The information referred to follows:]

With regard to the magnitude of in-lieu selections that are still unresolved, the Bureau of Land Management (BLM) estimates that it has 7,037 acres of land on which title is disputed. Of these 7,037 acres, the United States would want to retain 120 acres located within Sequoia and Kings Canyon National Parks, that have an estimated value of $30,000. The other lands are either shown on our title records as not belonging to the United States, or are in an area not necessary for Federal management. Our administrative costs in doing title searches, issuing disclaimers and paying county recording fees would be in addition to the $30,000.

As to my reaction to the alternative language going through the House of Representatives, H.R. 4429 was passed by the House on October 10, 1990. We have not established an official position on that bill. However, it seems that some of the provisions of that bill are biased towards the in-lieu claimants, although most of the bill is workable. We are concerned with sections 2(d)(2)(B) and 2(d)(3) of H.R. 4429. The Department of the Interior should not be placed in a position of adjudicating Department of Agriculture lands. However, we believe H.R. 4429 is a more workable bill than S. 2816.

Senator WIRTH. Mr. Henson.

Excuse me. Jake, do you have any kind of statement you would like to make?

Senator GARN. I do, but please go ahead and complete this panel first.

Senator WIRTH. Thank you. Mr. Hanson.

STATEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY GORDON SMALL, DIRECTOR OF LANDS, FOREST SERVICE; AND JAMES SNOW, DEPUTY ASSISTANT GENERAL COUNSEL, NATURAL RESOURCE DIVISION

Mr. HENSON. Thank you for the opportunity to offer our views on these bills.

I am accompanied today by Gordon Small, Director of Lands, Forest Service, and James Snow, Deputy Assistant General Counsel, Natural Resource Division, U.S. Department of Agriculture.

In an effort to be brief, I would like to summarize the testimony for the four bills.

Regarding S. 2474, land exchange for the Homestake Mining Company, the Department of Agriculture supports the concept of acquiring, by exchange, the Homestake Mining Company lands in the Black Hills National Forest.

We oppose the bill as currently drafted, however, due to several substantive problems. In June we testified before the House Interior Subcommittee on National Parks and Public Lands and the House Agricultural Subcommittee on Forests, Family Farms and Energy on H.R. 4567, the House companion to S. 2474. At those hearings we expressed concerns about mineral and water rights as they affected Spearfish Canyon and the provisions of the bill concerning the landfill.

Since the hearings in June we have been working with Homestake Mining Company to resolve our concerns and have made good progress. We have agreed that Homestake could retain all mineral rights for the 12,274 acres conveyed to the United States, subject to the Secretary's regulations in 36 CFR 251.15.

Homestake has agreed to a no surface occupancy restriction for the acres in Spearfish Canyon. This restriction protects the riparian fisheries and the aesthetic values being acquired in Spearfish Canyon.

The concerns we expressed in our earlier testimony about the water flow have also been addressed. Our concern about the transfer of the landfill have been addressed, as well. Homestake and Summit County have offered to pay $25,000 for the landfill and the county has proposed to indemnify the United States against any liability through a hold-harmless agreement authorized under section 107(e) of CERCLA.

We are satisfied with the substitute language reported out of the House Interior Subcommittee on National Parks and Public Lands and the House Agricultural Subcommittee on Forest, Family Farms, and Energy on H.R. 4567.

Should S. 2474 be amended in similar ways, we could support the exchange.

Regarding section 6 of S. 2543, study of five native villages and ANCSA, the administration is opposed to S. 2543. We concur with testimony given before the House Interior and Insular Affairs Committee by Patrick Hayes of the Bureau of Indian Affairs on July 31, 1990 and the testimony just presented by BIA.

We would make the following points. We believe that native claims were extinguished upon passage of ANCSA. It seems inappropriate now, after nearly 20 years, to upset the apple cart by second-guessing the carefully negotiated legislation. We are concerned that National Forest system lands and programs could be severely impacted should a study determine inequity and a settlement be proposed. It is likely that land for additional entitlements would come from the Tongass National Forest leading to adverse affects on public resource values in Southeast Alaska.

The study will likely set a precedent. History has shown that when we say let us explore whether these groups merit a better deal, other parties will ask for the same treatment. In any settlement each participant hopes for a better deal.

For these reasons we are opposed to enactment of S. 2543.

Regarding S. 2816, land selections in lieu of Forest Reserve lands. The Department of Agriculture opposes enactment of S. 2816. The bill purports to correct inequities whereby the Government received lands at the turn of the century for which the landowners were never paid or lands they selected were never conveyed.

We reject the contention that there are longstanding inequities affecting all of these lands. In effect, S. 2816 provides that the United States pay claimants, at fair market value, for lands that were made part of the National Forests by the Sisk Act of 1960 and have been protected and administered by the United States as public lands for years.

We believe it provides a potential windfall to some of the current claimants at taxpayers' expense. Congress has passed legislation on three occasions to compensate or reconvey lands to the original owners, heirs, or assigns of the lands involved. Some of the current claimants have title connected to the original grantors, but many of them have acquired a speculative title through tax sales or other mechanisms.

We acknowledge that there are some cases in which private parties should be given relief. We belief that relief is appropriate where persons have exercised normal use and occupancy of the land believing that they owned it. Since we testified before the

House Interior Subcommittee in June on H.R. 4429, the House companion bill of S. 2816, we have been working with the subcommittee and Department of the Interior to prepare acceptable substitute language.

We would be happy to work with this subcommittee as well to draft substitute language.

In summary, we assure the subcommittee of our strong desire to provide relief where such relief is truly warranted. But we cannot support the wholesale disclaimer of valuable Federal assets.

Regarding S. 2891, land exchange with Pitkin and Eagle counties, Colorado, the Department of Agriculture supports the concept of a land exchange with Pitkin and Eagle counties, but opposes enactment of S. 2891.

We are interested in acquiring about 671 acres of county lands that are located within the boundaries of the Holy Cross, Hunter-Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness areas and another 178 acres that offer or have important wildlife, scenic, watershed, and recreational values. But the counties do not have clear title to much of the lands they are offering to the United States.

The bill as introduced also provides that the United States assume the financial and legal burdens and liabilities of clearing title. The time and expense involved in clearing title to these county tracts means that the Federal lands are much more valuable than the county parcels.

Since S. 2891 was introduced, we have been working with the counties to administratively achieve the objectives of the Forest Service and both counties. We have made some progress, but work remains to be done.

In summary, we like the concept of the exchange. We are willing to continue to work with the counties to achieve an exchange in the public interest.

This concludes my prepared statements, Mr. Chairman.

[The prepared statement of Mr. Henson follows:]

PREPARED STATEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee:

Thank you for the opportunity to offer our views on these bills.

S. 2474, LAND EXCHANGE WITH HOMESTAKE MINING COMPANY

S. 2474, Homestake Mining Company Exchange, would authorize an exchange of lands in South Dakota and Colorado and a transfer of lands in Colorado. It would authorize the Secretary of Agriculture to convey approximately 1,450 acres of National Forest System lands in Colorado and South Dakota to Homestake Mining Company in exchange for approximately 12,274 acres of land owned by Homestake in South Dakota. All but about 40 acres of the National Forest System lands are located in Summit County, Colorado.

S. 2474 would also authorize a transfer of about 325 acres of National Forest System land to Summit County at no cost. This would transfer the Summit County landfill currently on National Forest System lands to the county.

The land exchange for 12,274 acres of Homestake Mining Company land would significantly enhance management of the Black Hills National Forest. These lands include several thousand acres of quality wildlife habitat. Acquisition of about 20 miles of Spearfish Creek would be an outstanding addition to the National Forest System providing valuable recreational, scenic, natural, and wildlife resources to the public. The National Forest System lands proposed for conveyance are, for the most part, urban in nature and are suitable for exchange.

The Department of Agriculture supports the concept of acquiring by exchange the Homestake Mining Company lands in the Black Hills National Forest. Due to several substantive and technical problems with S. 2474, however, we must oppose the bill as currently drafted.

In June, we testified before the House Interior Subcommittee on National Parks and Public Lands and the House Agriculture Subcommittee on Forests, Family Farms, and Energy on H.R. 4567, the House companion to S. 2474. At those hearings we expressed concerns about mineral and water rights—especially in the Spearfish Canyon—and the provisions of the bill concerning the county landfill. Since than, we have been working with Homestake Mining Company to resolve these concerns, and are now in a position to report favorably on our progress.

After much discussion, we have agreed that Homestake could retain all mineral rights, as originally proposed, for the 12,274 acres conveyed to the United States, subject to the Secretary's regulations in 36 CFR 251.15. These regulations require Homestake to obtain a permit from the Forest Service prior to initiating any mineral related activities on the lands conveyed to the Secretary. We propose that a copy of these regulations shall be attached to and become part of the warranty deed conveying the property.

In addition to the protection of resource values provided by the Secretary's regulations, Homestake has agreed to a "no surface occupancy" restriction for the 1,250 acres conveyed to the United States in Spearfish Canyon. This restriction prevents Homestake from occupying the surface of those lands for mining and exploration purposes, and protects the riparian, fisheries, and esthetic values being acquired in Spearfish Canyon.

Homestake officials have also agreed to ensure that in the unlikely event they exercise their rights for underground mining, they shall use only mineral exploration and development methods that do not impair the surface values of Spearfish Canyon. We propose that such an agreement be attached to and become part of the warranty deed conveying the property.

We have also reached an agreement with Homestake that it will exercise its reservation of water rights in accordance with Federal, State, and local laws, and execute cooperative agreements concerning water rights in the future.

We have evaluated South Dakota law and believe South Dakota State Law adequately and fairly deals with public interest issues concerning water rights.

The transfer of the landfill to Summit County raises two issues: first, the liability which might result from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) and, second, whether the land should be transferred without consideration. Homestake and Summit County have offered to pay $25,000 for the landfill, and the County has proposed to indemnify the United States against any liability through a "hold harmless agreement" authorized under Section 107(e) of CERCLA which would be executed before the transfer of title.

Substitute language reported out of the House Interior Subcommittee on National Parks and Public Lands and the House Agriculture Subcommittee on Forests, Family Farms, and Energy in June on H.R. 4567 addresses these concerns. Should S. 2474 be amended in similar ways, we believe that the exchange would be in the public interest.

SECTION 6 OF S. 2543, STUDY OF FIVE NATIVE VILLAGES AND ANCSA

I will limit my testimony to Section 6 of S. 2543 which provides for a study to determine whether Alaska Native residents in five Alaska communities have been afforded just and equitable treatment for the settlement of their aboriginal claims consistent with the intent, purpose and promise of the Alaska Native Claims Settlement Act (ANCSA).

The Administration is opposed to S. 2543. Patrick. A. Hayes, Deputy Assistant Secretary for Indian Affairs (Trust and Economic Development) Department of the Interior, testified on July 31, 1990, before the House Interior and Insular Affairs Committee on a similar bill, H.R. 5092. He stated that the while the bill limits the study to five locations, it would establish a precedent by opening the door for other non-Native communities to request similar studies claiming that they have a significant Native population. Furthermore, he testified that Native residents of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell are, in fact, beneficiaries of ANCSA as a result of their representation in the established Regional corporation. We agree.

The study proposed by Section 6 of S. 2543 would reopen issues settled 19 years ago. ANCSA provided 44 million acres of public domain land (12 percent of the total area of Alaska) and a cash payment of almost $1 billion to Alaska Natives. All Native land claims were extinguished upon enactment of ANCSA. In nearly two decades since the Act was passed, the Department of Agriculture has participated in numerous land exchanges, but no new entitlements have been granted.

S. 2543 also requires the identification of public or private lands and other assets that can be made available to Native corporations organized by the Native residents of the named villages, should the study be implemented and recommend additional settlements for any of the communities. As provided in ANCSA, the settlement could range from 23,040 to 161,000 acres for each community determined to be eligible. If all were recognized, 115,200 to 805,000 acres could be involved.

The five named communities, Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell are located either within or near the Tongass National Forest. If any newly defined entitlements are not confined to current 14(h) lands, we would expect additional entitlements to significantly impact Forest Service programs and public resource values on the Tongass National Forest. These impacts might also result in direct and indirect effects on the economy of Southeast Alaska. Consequently, if this study is implemented and a determination that inequity exists is made, we would recommend that any lands offered as settlement be confined to those lands originally granted under ANCSA.

As currently written, the bill requires an extensive study be completed by January 1, 1991—only 3 months from now—at an undetermined cost and with no identified funding. An additional 3 months is provided to develop any legislation necessary to implement the study recommendations. While we are opposed to the study, should Congress deem it necessary, we recommend limiting it to a review of the administrative records and legislative history and that the Federal agencies involved be given more time to complete it. Also, because of the potential impact on the National Forest, it is imperative that the Department of Agriculture be a major participant during the study and the identification of any compensation package.

In summary, we oppose enactment of section S. 2543. We believe authorizing such a study could set an undesirable precedent, reopen issues and controversies long settled, and adversely affect the public benefits provided by the National Forest System.

S. 2816, LAND SELECTIONS IN LIEU OF FOREST RESERVE LANDS

S. 2816, would "disclaim all right, title and interest of the United States in and to certain private lands conditionally relinquished to the United States" under the "in lieu selection" provision of the Act of June 4, 1897.

The Department of Agriculture opposes enactment of S. 2816. The bill purports to correct inequities whereby the Government received lands at the turn of the century for which consideration was never paid nor in lieu lands conveyed. The Administration rejects the contention that there are long standing inequities affecting all of these lands.

Congress has passed specific legislation on three occasions to provide a mechanism to compensate or provide relief to the original owners, heirs or assigns of these tracts. I ask that our Supplemental Statement which outlines the history of these lands be made part of the record.

The most recent Congressional action was the passage of the Sisk Act of 1960 which provided for compensation and interest to persons who filed claims with the General Accounting Office. The Act provided that unclaimed would become part of the National Forest and be administered as part of the National Forest.

Under S. 2816, title to these unclaimed that were confirmed in the United States under the Sisk Act would be disclaimed. The bill requires that the United States prepare a list of those lands to be continued in Federal ownership and that the United States purchase these lands from the current claimants.

S. 2816 would require that the United States to pay fair market value for lands that have been protected and administered by the United States for public purposes for over 85 years and provide a potential windfall to the current claimants at the taxpayers expense.

Some of the current claimants have title connected to the original grantors, but many have acquired a speculative title through tax sales or other mechanisms. And, in the majority of cases, the affected lands are not now claimed by persons who are occupying or using the lands.

We acknowledge that there are a number of cases in which private parties should be given relief, but we believe the equities and public land policies strongly favor

Federal retention of the majority of these lands for public uses. We believe that relief would be appropriate in those specific instances where there are actually persons who have owned and occupied the lands in the belief that the Government had relinquished or disclaimed title to them or their predecessors in title in the past.

We recommend that the Secretary of Agriculture be given limited discretionary authority to issue quitclaim deeds premised upon the incidence of ownership reflected in the following guidelines:

(1) The United States has previously disclaimed the subject land, by letter or deed; and

(2) No in-lieu lands or payments have been selected or received; and

(3) The tract has been occupied in good faith under color of title, and the land has been carried on local tax rolls and taxes have been continuously paid by the person claiming ownership.

(4) The United States has treated the tract as private lands.

These guidelines are consistent with cases we have dealt with subsequent to the Sisk Act of 1960. In about six cases, we have recommended, and legislation has been enacted, for the relief of persons who met these criteria. In these cases the lands had been held and transferred as private land by successive owners, taxes had been paid and succession of title was clear.

Since we testified before the House National Parks and Public Lands Subcommittee in June on the House companion bill of S. 2816, we have been working with the Subcommittee and Department of the Interior to prepare acceptable substitute language. We would be happy to work with this Subcommittee, as well, to draft substitute language.

In summary, we assure the Subcommittee of our strong desire to provide relief, where such relief is truly warranted, but the Department of Agriculture cannot support the wholesale disclaimer of valuable Federal assets such as S. 2816 would require. We recommend that the criteria described above be incorporated in any direction developed by Congress to provide equitable relief while protecting the valid interests of the United States.

S. 2891, LAND EXCHANGE WITH PITKIN AND EAGLE COUNTIES, COLORADO

S. 2891 would authorize and direct an exchange of lands in Colorado and a transfer of administrative jurisdiction of the White River National Forest Supervisor's Headquarters in Colorado. It would authorize the Secretary of Agriculture to convey approximately 186 acres of an administrative site known as the Mt. Sopris Nursery, which is an acquired site located outside the boundaries of the White River National Forest, to Pitkin and Eagle Counties, Colorado for approximately 1,344 acres of patented mining claims purportedly owned by the Counties. The Nursery Site is located in Eagle County while approximately 1,291 acres of the nonfederal lands are located in Pitkin County, and approximately 52 acres of nonfederal lands are located in Eagle County.

It also authorizes a transfer of administrative jurisdiction for the White River National Forest Headquarters in Glenwood Springs, Colorado from the General Services Administration (GSA) to the Forest Service. This transfer would involve about 1/2 acre of land and an historic office building.

The Department of Agriculture supports the concept of acquiring most of the county lands by exchange, but opposes enactment of S. 2891 as introduced. We have significant concerns about a number of provisions of the bill.

While acquisition of much of the county land would enhance management of the White River National Forest, some is not suitable for addition to the National Forest System, and some are only minimally acceptable. About 671 acres of these lands are located within the boundaries of the Holy Cross, Hunter-Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness Areas. Approximately 178 acres of other county lands have important wildlife, scenic, watershed, and recreational values. However, approximately 12 acres are not suitable for addition to the National Forest System, and 433 acres are only minimally acceptable for addition to the National Forest System.

Although some acres of the Mt. Sopris Nursery Site were determined to be appropriate to exchange, several acres of the Nursery Site are still valuable and needed for Forest Service administrative site purposes.

The most significant concerns about S. 2981 include disparity in value between the lands to be exchanged and the condition of title to the nonfederal lands.

The value of the Federal lands far exceeds the value of the county lands. Qualified appraisers estimate that the Federal lands proposed for conveyance in S. 2891 are far more valuable than the county lands. Although language in the bill proposes that the United States reserve certain interest in their lands we do not believe that retaining these interests equalizes the values in the exchange. The most appropriate resolution is for the counties to convey lands of equal value to those which they receive.

Another significant, and potentially costly problem, in the exchange as described in S. 2891, is that the counties do not have clear title to much of the lands they are offering to the United States. The counties acquired title to the offered lands through tax delinquency proceedings and title is colored due to filing of intervening quit claim deeds. The counties are unable to provide title insurance without resolution of the color of title 12 on these lands. Without the benefit of title insurance, the Government assumes the reish of known title problems which could, assuming the worst case analysis divest the Government's title or create a potential statutory taking.

In addition to the question of clear title, the bill as introduced provides that the United States assume the financial and legal burdens and liabilities of clearing title. Section 5(b) obligates the United States to expend public funds to defend title to county lands which is known to be colored. The United States might expect to be named as defendant in 30 to 50 separate quiet title suits or claims of taking as a result of this subsection. The Department of Agriculture Office of the General Counsel advises that costs to the United States for actions in Federal Court could be significantly higher than the $300,000 estimate that the Counties expect to expend for similar actions in State Court.

There are other problems with the bill as introduced. S. 2891 requires the exchange be completed within 6 months of enactment. This time limitation is insufficient to complete the NEPA process and other required studies.

The bill also limits management options on lands to be acquired by the United States. The bill contains confusing language pertaining to mineral leasing on acquired lands and restricts management options on lands outside classified Wilderness would be unduly restricted. The bill legislates the highest and best use of the lands to be retained by the United States to the detriment of the public interest.

We also believe that the number of acres proposed for retention by the Forest Service may be inaccurate.

Since S. 2891 was introduced, we have been working with the Counties to administratively achieve the objectives of the Forest Service and both Counties. Some progress has been made, but work remains to be done. We will continue to work with the Counties to administratively achieve an exchange in the public interest.

The Department of Agriculture has the administrative authority to exchange lands with the counties as provided in our regulations at 36 CFR 254, Subpart A. We believe the proposed land exchange would be in the public interest if Pitkin and Eagle Counties take the steps necessary to clear title to the lands proposed for conveyance to the United States.

This concludes my prepared statement and I would be pleased to answer the Subcommittee's questions.

Supplemental Statement Concerning S. 2816, a Bill to Disclaim all Rights, Title, and Interest in and to Certain Private Lands

A SHORT HISTORY

The "in lieu selection" provision of the organic Act of June 4, 1897 (30 Stat. 36), permitted the owners of lands within a Forest reservation to relinquish the tract to the United States and select "in lieu thereof" an equal acreage of public lands. The 1900 and 1901 amendments required that selections be confined to vacant, surveyed, and nonmineral public lands which are subject to homestead entry.

Many questionable practices arose in filing of relinquishments and making "in lieu selections" and in 1905, Congress enacted the Act of March 3, 1905 (33 Stat. 1264) which repealed the Forest Lieu Selection provisions of the 1897 Act. When the Act of March 3, 1905 was passed, however, it caught various tracts of land in all stages of reconveyance. The Act protected the rights involved in all lists of selections then on file in the (General Land Office), but made no provision for recoveyance for lands caught in the intermediate stages. As a result of the lieu selection provision, many tracts of land were relinquished to the United States. In most of these cases, patents to the land selected "in lieu thereof" were granted and the base lands relinquished to the United States. In regard to some of the lands relinquished to the Government, however, either the application for the lieu land was not filed, or the application was rejected, or for other reasons the lieu selection was not consummated.

It appears that one of the practices contributing to the unperfected lieu selection acreage was the activity of various speculators and real estate people who had purchased the rights of numerous settlers, had caused them to reconvey their lands to the United States, and filed the deed of reconveyance in the local County office of record. In a great many instances, however, the speculator or real estate dealer had failed to file his selection of lieu land before the repeal of the Forest Lieu Selection Act. When the Act was repealed many of the holders of the property or assigned rights purchased from the settlers, apparently considered that their interest in their property had been thus rendered valueless. In other words they had lost both their base lands and their right to select lieu lands. We surmise that they considered it useless to forward the deed and abstract of title to the Government, and at the same thought they were without legal title to the land themselves. Usually they did not care for the land relinquished to the United States at the time of conveyance, but were after the highly valued right to select an equal acreage of other more valuable public lands of the United States. This situation left record title to the base land in the United States by virtue of the relinquishment. However, the status of such base lands was left in doubt because the private parties had received no selected lieu tracts in return and had taken no action to claim the base lands as their privately owned property.

In 1922 and 1930, Acts (42 Stat. 1017; 46 Stat. 257) were passed which authorized reconveyance of these relinquished lands back to the former owners, their heirs, or assigns. Prior to 1922 there was no general authority for reconveyance of base lands where selections could not be consummated. Further because of proven fraud by the grantors, in the acquisition of their base lands, a number of approved selections were canceled by the Federal Government. In order to alleviate this situation disclaimers were issued in a number of cases. However the effect of such a document, even when recorded, was frequently questioned. Because of the questionable effect of disclaimers and prior fraudulent activities, the Congress passed the Act of September 22, 1922. This Act allowed a period of 5 years for any person or persons or their heirs or assigns, who in good faith relinquished lands in a national forest under the 1897 Act and failed to get their "in lieu selection" recorded prior to the 1905 Act or whose selection had been rejected, to make application for a quitclaim deed reconveyance or if the land had been disposed of or appropriated for Federal purposes, the right to select an equal value exchange of National Forest land or timber. The statutory period of the 1922 Act ran in 1927.

No further reconveyances were made until the 1930 Act was passed. During the three year period between relief Acts it was held that the right to make to selection or reconveyance was limited by statute and failure to make application within the time allowed terminated the rights thereunder. In the Peale case (1928) the Court held that failure to make timely lieu selection under the 1922 Act would cut off any further right of selection or reconveyance.

However, Section 6 of the 1930 Act provided authority to reconvey base land by quitclaim deed in any uncompleted land exchange case. The Department of the Interior and the Bureau of Land Management held that this Act made it mandatory where a conveyance had been made to the United States under the 1897 Act, to issue a quitclaim deed to the party or parties entitled thereto.

From 1905 to 1960, the Department of the Interior and Agriculture and the Congress wrestled with resolving claims resulting from uncompleted lieu selections. The Forest Service instructed its employees to assume custody and protection of the unclaimed "no-mans" base lands by administering them as National Forest lands until such time as title was confirmed in the United States or in the grantors, their heirs, or assigns as authorized by Congress.

Under these Acts, many parcels of land (approximately 46,000 acres) within the National Forests were returned to private ownership. Some of the parcels quitclaimed under the 1930 Act in the late 1950's were to third parties who had acquired the original grantors title interest. These lands had been protected and managed as Federal land for over 50 years. This threat to the National Forests and National Parks became a matter of public concern. The House Subcommittee on Public Lands held hearings on this matter in 1959.

At the hearings held in Fresno, California in 1959, it developed that certain persons had been making a practice of acquiring from the original land owner or from heirs or by other means quitclaim deeds or other forms of transfers. They considered the deeds into the United States nothing but a blur on the title. With assignment in hand and other intermediate steps (such as uncontested lawsuits, demands to be co-assessed and other similar actions not involving the United States) they would demand quitclaim deeds under the 1930 Act. From March 1954 to August 1959 reconveyances involving 14,500 acres had been made. The situation had reached what the public press, conservation interests and others regarded as being a virtual give-away of public resources approaching a scandal.

On July 6, 1960, Public Law 86-596 (74 Stat. 334), commonly called the Sisk Act, was passed.

The purpose of the Act of July 6, 1960 (74 Stat. 334), was to finally settle the numerous and complex situations involving lieu selection rights derived from the Act of June 4, 1897, and related rights from supplementary acts. The Act of July 6, 1960:

1. Granted persons who had conveyed lands to the United States as a basis for a lieu selection and had not received a lieu selection, a reconveyance, or other compensation as provided by a law, a right to receive payment upon demand made within one year from the date of the Act.
2. Repealed or made inapplicable provisions of prior laws that had authorized alternate means of settlement, and
3. Confirmed title in the United States to all of the lands that had been conveyed to it as a basis for a lieu selection, regardless of whether or not the proper persons made demand and received payment.

In some cases, relying upon an unauthorized disclaimer, or unaware of the cloud upon these tracts, private parties did not attempt to exercise their rights under various in-lieu selection laws.

We have recently discovered that an Attorney from Los Angeles, William Morris Taylor, filed over one hundred claims under the Sisk Act in his own name. A number of these cases were withdrawn after research showed them to be invalid. Those that were not withdrawn were denied based on lack of privity between Taylor and the grantor-selectors. In an April 1962 response to Congressman Sisk the BLM indicated that 17,460 acres of the Taylor claims had been rejected and 5,730 acres were pending. Although there may have been other claims under the Sisk Act, we have not found records on them. There is no indication that any payments were made under the Sisk Act.

In 1985, at the direction of Senator McClure, Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations, and direction in Senate Report No. 98-578, the Forest Service and the Bureau of Land Management developed a listing of lands within National Forest boundaries to be claimed by the United States under the Act of July 6, 1960.

As of 1985, county and other records indicate that approximately half of the 12,000 acres of National Forest lands to be retained by the United States are not claimed by private individuals. Half are claimed by approximately 34 individuals as follows: approximately 1,400 acres were claimed by two members of the Forest Lieu Selection Committee; approximately 1,200 acres by Ranch Development Co. and Frontier Mining Company; and approximately 3,400 acres by about 30 other individuals. Many of these parcels are the same ones previously claimed by William Morris Taylor and rejected by the Bureau of Land Management.

According to our current listing we estimate that approximately 17,800 acres and 209 parcels of lands, originally conveyed to the United States by 102 grantors, within the National Forest System could be affected S. 2816. We estimate that 12,046 of these acres (146 parcels/72 grantors) should be retained in Federal ownership and approximately 5,724 acres (63 parcels/30 grantors) should be considered for reconveyance or disclaimer. Half of the retain lands or 6,008 acres or 67 parcels were conveyed by only 7 of the 72 grantors. To the best of our knowledge none of these grantors or their heirs or assigns took action in the past to reclaim their title nor are they current claimants of these lands. The lands shown for reconveyance, the 63 parcels, are claimed by over 2,000 individuals.

To the best of our knowledge, only one of the current claimants to the land the Forest Service wishes to retain have title connected to the original grantors.

Senator WIRTH. Thank you very much, Mr. Henson.

Senator Garn, I was pleased to see Kokapelli on the agenda. You and I have worked together on the Kokapelli.

STATEMENT OF HON. JAKE GARN, U.S. SENATOR FROM UTAH

Senator GARN. Thank you very much, Mr. Chairman.

I would like to comment briefly on the Kokapelli National Outdoor Theater. As you very well know, we worked together on that trail last year, part of it in Colorado, part of it in Utah. That certainly has been very well received.

Kokapelli Outdoor Theater was proposed to go along with that recommended by Grand County, in coordination with the University of Utah College of Fine Arts. It has widespread support, not only in the Moab area but throughout the State, people who hope to use the backdrop of Arches and Canyonlands National Park for summertime amphitheater using University of Utah students and professional actors.

I introduced the bill in June. It calls for an authorization, and I do emphasize at this point, an authorization of $6 million in Federal money with a strict 35 percent local cost share.

I am very disappointed in Interior's testimony today because it has been my impression from those I have talked to all along that they supported the idea, as well as BLM. But apparently OMB strikes again.

It is twice in the last week that OMB has nixed in my State. I am getting a little bit tired of OMB, which, with their bean counters down there, does not understand the substance of most issues, yet seems to be an expert on the whole world—not just the United States, but everything. They have got an expert down there who has some opinion on it. So I am disappointed. When you have such wide-spread support within these departments that they are in favor, but then I think just yesterday prompted this testimony.

I am interested as well that, while they oppose it, the testimony is interesting. I will just read part of it because after they oppose the bill they say, "The area encompassed by the bill is indeed special. It is a segment of a larger area that is endowed with slick rock which distinguishes it from other areas. The slick rock makes excellent bicycle trails. The slick rock also forms a natural amphitheater which can be put to variety of uses. The area is replete with artifacts and elements of the Anasazi culture.

"Moab is the center of a great deal of oil and gas and coal production. It is also becoming a significant recreational area. The area where S. 2815 would place the Kokapelli Theater and other surrounding areas could be the basis for the enhancement of existing multiple uses."

It is great testimony, if you take out the opposition. It makes the case for everything all of us are saying about what a wonderful area it is with a natural amphitheater.

So I still think that it is an extremely good bill. Obviously, as a member of the Appropriations Committee, and when we talk about that is the excuse for everything, and we all know about the budget deficit, but money is not spent unless Congress appropriates it. I want to emphasize this is an authorization. I still think it is an extremely good and beneficial bill.

Despite testimony given today by the administration, I would hope that we would go forward with it and authorize this particular project because it certainly would be an enhancement, Senator Wirth, to the trail that you worked so hard on in Colorado and the addition of that trail into Utah.

I would also like to comment on S. 2816. If you will forgive me for taking the time of the committee on this. It is a complicated issue. So rather than try to summarize it, I will read as quickly as I can the issue because it is a difficult one.

I am pleased to testify in support of S. 2816, which would rectify a longstanding wrong unintentionally visited upon a number of our citizens in the Western States by the United States Government almost 100 years ago.

The problem which this bill would resolve dates from the turn of the century and may be briefly stated as follows.

By the act of June 4, 1897, Congress invited landowners within the recently created National Forests to trade their lands to the United States in return for equivalent acreage of Federal lands outside the National Forests. Interested landowners did convey their lands, referred to as the base lands, and the United States retained record title of the conveyed land. But for a variety of reasons, the Government did not keep its end of the bargain and trade the lands in exchange.

Because of the passage of time many of the successors in interest of the original grantors have been unable to recapture their predecessors' lands or receive any compensation for them.

In 1922 and 1930 Congress attempted to remedy the situation by authorizing the Secretary to complete the exchanges or to issue timber-cutting rights or quitclaim deeds to claimants who elected to seek such relief. Although action under these acts cleared title to almost 45,000 acres of base lands, it did not completely resolve the problem.

The most recent congressional effort to deal with the problem was the so-called Sisk Act of July 6, 1960. This act established a procedure by which claimants could apply to the Secretary to receive $1.25 per acre for their base lands plus interest. This compensation was less than the cost of complying with the application procedures. Potential claimants apparently were not interested in that losing proposition, since only one person ever filed a claim under that act and his application was rejected.

It is apparent that the Sisk Act's attempt to resolve the remaining problems has been a total failure. Moreover, it has generated some new ones inasmuch as the Forest Service has sometimes claimed, on an inconsistent basis, that the act accomplished a legislative taking of all base lands. The harsh inequity of the Forest Service practice is illustrated by the experience of one of my constituents, Mr. Wayne Hansen of Orem, Utah, who asked that I submit a short statement of his experience for the record. And I would ask that his statement be placed in the record,* Mr. Chairman.

Senator WIRTH. Without objection.

Senator GARN. In summary, title to some 27,507 acres of base lands scattered throughout 10 Western States presently remains clouded and essentially unmarketable. 19,870 acres of these lands are in National Forests, and 7,637 acres of former National Forest lands are now administered by the BLM. Despite their equitable rights, many of the private claimants may be precluded from asserting their claims because of the statute of limitations under applicable law. And those who may not be barred face lengthy, expensive litigation to validate their claims. The result is that the United States has, in practical effect, received a windfall of 27,500 acres of land without 1 cent of compensation to the original grantors or their successors in interest.

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* See the Appendix.

Mr. Chairman, relief of this very inequitable situation to date has been limited to piecemeal, private bills. However, I believe the simplest way to clear the local land records and do justice to all concerned is for Congress to enact generic legislation along the lines of S. 2816.

My bill would disclaim any Federal interest in the base lands and require the Secretary of the Interior to issue appropriate disclaimers of interest to their original grantors and their successors and to file such disclaimers in the States and counties where the base lands are located. Any party accepting the benefits of the act would be deemed to have waived any claim for damages against the United States or its agents for action taken while the title status of the base lands was unresolved.

Base lands which have been included in environmentally important Federal land management units are exempted from the bill's disclaimer provisions for a reasonable period, and the Secretary is given authority to acquire such lands if he so chooses.

Mr. Chairman, I thank you for your patience on both of these bills. That concludes my statement.

Senator WIRTH. Thank you, Senator Garn.

Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I will be very brief.

I would like to draw attention to the witnesses from both the Forest Service and the Department of the Interior. While I was not here to hear your comments with regard to the landless natives, I want to appeal to you to recognize the potential injustice that was done in leaving out the residents of the communities of Wrangell, Petersburg, Ketchikan, Tenakee, and Haines.

I think the particular legislation which we have introduced, S. 2543, simply mandates that an evaluation of why they were left out takes place.

I think you will see that the study will show that they were simply excluded as a consequence of being overlooked. The question of adequate consideration for these people who were left out, I think, bears the commitment of your agencies.

And while I concur that the land patterns in Southeastern Alaska do not suggest that there is available land to address the needs, there are other alternatives. I would remind you to look at the timber base as it is currently structured with one-third of the commercial timber area in a designated wilderness, another third exempt from access to any logging, limited to access for mineralization and transmission lines and a few other restrictive uses, and the remaining third which has been dedicated for the commitment and the viability of Alaska's timber industry as it is currently postured. So there are alternatives.

They are not alternatives that are not fraught with some degree of concern by both sides, but nevertheless, I think it is necessary that these people be given the same consideration as was given to the other natives in Alaska. I would ask for that consideration.

That concludes my statement, Mr. Chairman.

Senator WIRTH. Thank you very much, Senator Murkowski.

Are there questions of our panelists from the administration?

Senator GARN. Could I ask unanimous consent on Senator Wallop's behalf that a statement be placed in the record for Congressman Lagomarsino on S. 2860?

[The prepared statement of Mr. Lagomarsino follows:]

PREPARED STATEMENT OF HON. ROBERT J. LAGOMARSINO, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman and subcommittee members I would like to express my appreciation for the opportunity to present my views on S. 2816, which is being heard by your subcommittee today. I especially want to express my appreciation to Senator Garn for introducing this measure in the Senate.

I first became aware of the problems arising from the 1897 in lieu selection and subsequent acts when I was approached by one of my constituents about 6 years ago. She had recently received a letter from the Forest Service stating that title to 40 acres of land, which she had purchased some 37 years earlier, and subsequently improved and paid taxes on for all those years, actually belonged to the Forest Service under the 1960 Sisk Act. After researching this situation, I learned that (1) a private relief bill would be required to remedy the problem faced by my constituent and (2) that hundreds of private landowners across 11 Western States face similar title problems.

These title problems arise directly form the 1897 in lieu selection Act under which the Forest Service was attempting to consolidate its holdings within newly created forest reserves. Under that Act, the Forest Service encouraged private landowners to conditionally relinquish title to their lands in exchange for the opportunity to select other federal lands in lieu thereof. Unlike the land exchange procedures in effect today, where titles to both parcels of land are exchanged simultaneously, these private persons were required to first vacate their title. For a variety of reasons, including the ultimate repeal of the 1897 Act 8 years later, many of these exchanges were never consummated. Although the federal government attempted to vacate their claim of title to these original, base lands, and sporadically, even issued disclaimers, a federal cloud on many of these titles remains.

Over the years, four different statutes have been enacted in an attempt to address this problem. Taken as a whole, these statutes have been effective at resolving most of the title problems. However, the most recent of these acts, the 1960 Sisk Act, was totally ineffective. This act was envisioned as the final resolution to those outstanding title problems. The Act provided one year for potential claimants to come forward and be compensated for their lands. After the one year timeframe, all lands not claimed were to become the property of the federal government. Not one single claimant came forward under this Act for relief. This was probably due to the fact that the $1.25 per acre offered by the federal government under the Act was less than it would have cost most persons to file their claim. Since passage of this 1960 Act, subsequent ludicial scrutiny has challenged both the assumptions upon which this law was based and the validity of conferring all title to these lands to the federal government.

At the present time, it is estimated that there are as many as 2,300 owners claiming some 19,000 acres with outstanding title problems. Most of these lands are managed by the Forest Service and Bureau of Land Management and both agencies desire to resolve these problems. Recognizing that continuing to deal with these landowners on a case-by-case basis through private relief bills would create an undue burden on both landowners and Congress, I introduced H.R. 4429 on March 29, 1990 in an attempt to address this problem comprehensively.

I submit that the basic issue here is one of fairness and equity. Should title to these lands be vested in the federal government, when they have never provided the original owner any compensation, but simply elected on a random basis to occupy these lands? Or, should the title in equity be retained in the private owner? The answer to this basic question appears obvious, but application of this principle to the myriad of different situations has proven quite complex. My bill would recognize the private owners who can establish title to the lands in equity, but ensure the federal government retains any lands of national interest.

The House Subcommittee on National Parks and Public Lands held a hearing on this measure on June 7, 1990. At that hearing, the administration expressed some concerns with the original bill as introduced. Since that hearing, I have worked closely with all interested parties to resolve those concerns and am pleased to announce that they have been resolved. A mark-up on this measure is scheduled in our subcommittee for September 27. It is my expectation that the House will be able to act on the bill this session and I hope that the Senate will be able to do likewise. I would be pleased to work further with all members of this committee to resolve any of their concerns on this measure.

I appreciate the opportunity to be able to present my views on this bill to the subcommittee.

Senator MURKOWSKI. May I ask if there is a Raymond Roberts in the audience? Because I see he is a witness and he is speaking on behalf of the ANCSA Land Acquisition Coalition. I was kind of looking forward to shaking his hand, but I do not see him anxious to identify himself.

Mr. VAN BROCKLIN. Senator, I am substituting for him today.

Senator MURKOWSKI. Would you give the chairman your name, please?

Mr. VAN BROCKLIN. Robert van Brocklin.

Senator MURKOWSKI. Thank you.

Senator WIRTH. Senator Garn, if you would look at the agenda, we have quite a lengthy issue, I think, related to the Colorado-South Dakota land exchange. If you like, what we could do is go to the other witnesses, the gentlemen from Portland that you were just talking about, Frank; Mr. Panos from the University of Utah; and Mr. Muys and get your issues out of the way.

Senator GARN. That would be very considerate of you.

Senator WIRTH. If we might shift the agenda a little bit. What we would like to do is have the Colorado-South Dakota land exchange on third.

And out of deference to Senator Garn and his schedule, perhaps we could have Mr. Geoffrey Panos from the College of Fine Arts at the University of Utah join us at the witness table and Mr. Jerome Muys, Counsel of the Forest Lieu Selection Committee in Washington, and whoever was sitting in for Mr. Raymond Roberts—Mr. Van Brocklin from the Alaskan Land Acquisition Coalition. The three of you might join us at the witness table.

Again, I would note that we would ask you to summarize your testimony, I would hope in less than 5 minutes. We are going to have a vote very shortly and I thought if we could dispose of this, Jake, that would get us done before the vote and you have to leave.

Senator GARN. That is very nice of you.

Senator WIRTH. Why do we not start with you, Mr. Panos. Could we do that? Again, the committee appreciates your being here.

We will go from him to Mr. Muys and then to Mr. Roberts' replacement, Mr. Van Brocklin.

Mr. Panos.

STATEMENT OF GEOFFREY G. PANOS, COLLEGE OF FINE ARTS, UNIVERSITY OF UTAH, SALT LAKE CITY, UT

Mr. PANOS. Thank you very much. This is a proposal for the Kokapelli Outdoor Theater facility in Moab, Utah. The Kokapelli Outdoor Theater facility would be a national center for the performing arts set in the rare red rock terrain outside of Moab, Utah in the heart of the American Southwest. The site considered for the facility sits amidst a maze of sandstone domes and fins with a vista of Arches and Canyonlands National Park, the Colorado River Gorge, and it sits at the foothills of the La Sal Mountains.

Moab is the northern gateway to the Colorado Plateau, a feature designated by the United Nations as one of the 10 geological treasures of the world. This area is also an archeological resource of great significance; 35 percent to 40 percent of all rock art in the West exist in the immediate vicinity.

An important symbol in this rock art to the early Americans and their descendants today is Kokapelli, a flute-playing, magical spirit who wandered the region providing abundance of crops and human fertility necessary to sustain life. Like its namesake, it is hoped that the national designation of this special place will be a great inspiration for performing artists and their audiences.

This site we are talking about is located in the Slick Rock Recreation area, which is of course, the trail head for the Kokapelli—the internationally regarded Kokapelli bike trail and the Slick Rock bike trail. This is a good combination because the adjacency would allow for sharing of existing support infrastructure and aids in the management of both facilities.

The western location of Kokapelli would complement Wolf Trap National Park for the Performing Arts in Virginia. But unlike Wolf Trap, this is a secluded desert setting. But the core of the audiences would be drawn from the ever-increasing number of tourists who have already experienced the beauty of the area. I believe 1.5 million visitors went on BLM land in the immediate vicinity just last year.

Kokapelli, like Wolf Trap, will be operated and managed in the unique partnership between a Federal agency, that is the Bureau of Land Management, and a private foundation created by the University of Utah. And, of course, this foundation will be composed of appropriate individuals known for their national prominence in the performing arts.

This designation of a national outdoor performance facility will greatly aid in the foundation in generating private contributions necessary for the construction and the ongoing costs of the facility. And we are going to be undertaking to keep it self-sustaining.

Initial performances at this national outdoor facility will be held under the open desert skies. Presentations would capitalize upon the chief characteristics of the site, numerous natural performing areas. These are smooth sandstone domes and fins of red hue. And the warm desert climate allows an outdoor performing season from early April even to the first part of November.

Proposed performance venues include an open air theater in the round, a natural concert shell, a "Theatre of the Sky" for astronomical presentations and a year-round enclosed theater facility. This enclosed stage, with state-of-the-art theater technology, would enable the year round presentation of traditional classical performances of ballet, opera, theater, and a wide span of musical events.

Also, the Kokapelli National Outdoor Theater will be a home for what we call wilderness performance, which we have been doing for several years now, where we take out opera, ballet, symphonies, and we actually perform at remote sites. This is an incredible combination, if you can imagine this.

The Kokapelli National Outdoor Theater, located in Southeastern Utah, administered by the Bureau of Land Management in partnership with a private foundation, combines the beauty of human performance with the pristine environment of the four corners. This rare blending of art and nature will create a valuable cultural resource of national significance in this planetary treasure we know as Canyonlands.

[The prepared statement of Mr. Panos follows:]

PREPARED STATEMENT OF GEOFFREY G. PANOS, COLLEGE OF FINE ARTS, UNIVERSITY OF UTAH, SALT LAKE CITY, UT

The Kokopelli National Outdoor Theatre facility would be a national center for the performing arts set in the rare red-rock terrain outside of Moab, Utah in the heart of American Southwest. The site considered for the facility sits amidst a maze of sandstone domes and fins with a vista of Arches and Canyonlands National Parks, the Colorado River and the La Sal Mountains.

Moab is the northern gateway to the Colorado Plateau, a geologic feature designated by the United Nations as one of the ten geological treasures of the world. This area is also an archeological resource of great significance. Impressive reminders of the ancient Native American civilization in the form of rock art and rare preserved structures are found throughout this region.

An important symbol to these early Americans and their descendants today is Kokopelli, a flute playing, magical spirit who wandered the region providing abundance of crops and human fertility necessary to sustain life. Like its namesake, it is hoped that a national designation of this special place will be of great inspiration for performing artists and their audiences.

This site is located in the Slickrock Recreation Area administered by the Bureau of Land Management, adjacent to the trailhead for the internationally regarded Moab Slick Rock and the Hokopelli Mountain Bike Trails. The adjacency allows for sharing of the existing support infrastructure and aids in the management of both facilities.

The western location of "Kokopelli" would compliment Wolf Trap National Park for the Performing Arts in Virginia. The secluded, desert setting of this western site presents intriguing challenges and rewards, in performance, production and audience experience. The core of the audiences will be drawn from the increasing number of tourists who already experience the beauty of the area.

Kokopelli, like Wolf Trap, will be operated and managed in a unique partnership between a federal agency, the Bureau of Land Management, and a private foundation. Created by the University of Utah, this foundation will be composed of appropriate individuals known for their national prominence in the performing arts. A national designation will greatly aid the foundation in generating private contributions necessary to the construction and on-going operating costs of the facility.

Initial performances at the National Outdoor Theatre facility will be held under the open desert skies. Presentations would capitalize upon the chief characteristics of the site—numerous natural performance areas. These are located among the large, smooth domes and fins of red-hued Navajo sandstone. These geologic features are enhanced by the stunning setting of a high, pure vistas and a warm climate which allows outdoor performing from April through October.

Proposed performance venues include an open-air theatre-in-the-round, a natural "concert shell", a "Theatre of the Sky" for astronomy presentations, and a year-round enclosed theatre facility. The many venues would allow performances ranging from the simple, intimate productions to major mainstream exhibitions. An enclosed stage with state-of-the-art theatre technology would enable the year-round presentation of traditional classical performances of ballet, opera, theatre, and a wide span of musical events throughout the year.

A unique aspect to the construction of the enclosed stage could be the use of well-known sandstone excavation techniques developed by uranium mining engineers. These techniques would allow placement of much of the year-round performance facility within the strong Navajo sandstone. Constructing the facility in such a careful manner would preserve the visual purity of the area yet allow the many needs of audience, the performers and the theatre technicians to be met.

The Kokopelli National Outdoor Theatre facility will also be a home base for "wilderness performances" presented throughout the four corners region. Wilderness performance is a temporary staging of a traditional classical presentations and contemporary works at remote sites adjacent or within spectacular natural wonders of the southwest.

Kokopelli National Outdoor Theatre facility, located in Southeastern Utah, and administered by the Bureau of Land Management, combines the beauty of human performance with the pristine environment of the four-corners region. The on-site, as well, as the wilderness performances will combine to provide a unique array of artistic experiences for performers and their audience. This rare blending of art and nature will create a valuable cultural resource of national significance.

Senator WIRTH. Thank you very much. We might go from there to Mr. Muys.

STATEMENT OF JEROME C. MUYS, COUNSEL, FOREST LIEU SELECTION COMMITTEE, ACCOMPANIED BY B.K. HERNDON, CHAIRMAN

Mr. MUYS. Thank you, Mr. Chairman, Senator Garn. I am Jerome C. Muys, a member of the firm of Will and Muys here in Washington, D.C. I am special counsel to the Forest Lieu Selection Committee. I am accompanied by Mr. B.K. Herndon of Grants Pass, Oregon, who is chairman of that organization.

The committee is composed of many of the landowners in the 10 Western States who would be the principal beneficiaries of the provisions of S. 2816 to remove the Federal cloud on the title to some 27,500 acres of lands in those States comprised of some 317 separate tracts involving almost 1,800 landowners. And I might say, about 1,100 of those acres are in Colorado, Senator Wirth, and about 1,900 in Utah, Senator Garn.

In light of Senator Garn's statement explaining the background and purpose of the bill, I will just simply like to highlight my statement and submit it in full for the record.

First, with respect to the Sisk Act of 1960, which Senator Garn mentioned and the Forest Service commented on, the committee reports on that legislation made it clear that it was enacted on the mistaken legal premise that the United States had full, unqualified title to the base lands at issue. This legal assumption has subsequently been rejected on several occasions by the courts, most recently by the Ninth Circuit just last year in the State of Oregon against the Bureau of Land Management.

Not only was the legal assumption underlying the Sisk Act erroneous, but its language was ambiguous with respect to its scope and effect. A major area of uncertainty is whether the act was intended to effect a legislative taking of the outstanding claims, which we dispute.

But even if it did, an opinion by the Congressional Research Service in 1974 concluded that Congress lacked the power to set $1.25 as the fair market value for the legislative taking.

Second, I want to emphasize the great inequity that has resulted from the inconsistent practice of the Federal agencies in issuing disclaimers of the Federal interest to various parties over the years, the inconsistent ownership claims of the Forest Service under the Sisk Act. For example, since 1960 the Forest Service has purchased, either directly or by exchanges, some 3,300 acres of land that they now claim was legislatively taken by Congress in the Sisk Act.

The third area of inconsistency is the piecemeal, private relief legislation which has been enacted over the years and, finally, the action of the Justice Department, only 3 years ago, when entering into a settlement of a suit brought by the State of Montana by which the United States disclaimed the Federal interest in some 16,000 acres of base lands administered by the Forest Service, the BLM, and the National Park Service. We are trying to accomplish the same result that Justice did by stipulation in this generic legislation.

It is obvious that justice has been meted out on a hit-or-miss basis, leaving many claimants still without relief.

Finally, Mr. Chairman, I want to emphasize that we began discussions of our proposal with the Forest Service and the BLM over a year ago in an effort to reach to a consensus if possible and appropriate legislation. Those efforts have continued after the House hearing on Representative Lagomarsino's companion bill, H.R. 4429, which we understand will be marked up and reported to the full House Interior committee tomorrow. We have agreed to a number of amendments that the majority and minority staffs have proposed. We hope the Forest Service and the BLM will do so also.

As a result, there is agreement that the bill should be amended to first protect any interest granted to third parties, such as rights-of-way or any Federal uses authorized while the United States mistakenly assumed it had title. Second, we should expand the Secretary's acquisition authority for nationally significant lands to include exchange authority. And, third, we should authorize the Secretary to designate additional lands, other than those already in the preservation management system, which have important resource values requiring Federal ownership.

Mr. Chairman, Mr. Herndon and I will be happy to answer any questions that either you or Senator Garn may have on the bill.

[The prepared statement of Mr. Muys and Mr. Herndon follow, the supporting materials appear in the Appendix on page 163:]

PREPARED STATEMENT OF JEROME C. MUYS, COUNCIL, FOREST LIEU SELECTION COMMITTEE

Mr. Chairman, members of the Subcommittee, I am Jerome C. Muys, a member of the firm of Will and Muys of Washington, D.C., and am special counsel to the Forest Lieu Selection Committee. I am accompanied by Mr. B.K. Herndon of Grants Pass, Oregon, chairman of that organization. The Committee is composed of many of the landowners in the ten western states of California, Arizona, New Mexico, Colorado, Utah, Idaho, South Dakota, Wyoming, Washington and Oregon who would be the principal beneficiaries of the provisions of S. 2816 to remove the federal cloud on the title to some 27,500 acres of land in those states comprised of some 317 separate tracts involving almost 1,800 land-owners. A breakdown of those lands by state and county is Attachment A to my testimony. In 1985 and 1986 the Forest Service and the BLM prepared and submitted to the Senate Appropriations Committee more detailed lists based on our Committee's research which I believe generally verified its substantial accuracy. Our further research since 1985 has identified some additions and deletions which we have provided to those agencies.

The problem which this bill would resolve dates from the turn of the century and stems from a complex web of seven federal statutes, decades of inconsistent action and inaction by the Forest Service and the Interior Department, and a long line of judicial decisions. However, the problem may be briefly stated as follows: Around the turn of the century, Congress invited certain landowners to trade their lands to the United States for equivalent acreage of federal lands. Interested landowners did so convey their lands, but, for reasons which I will detail, the United States did not keep its end of the bargain and, because of the passage of time, many of the successors in interest of the original grantors have been unable to recapture their predecessors' lands or receive compensation for them.

The Act of June 4, 1897, 30 Stat. 11, 36[1] invited the owners of private lands within the boundaries of the recently created national forest preserves to transfer their lands to the United States in exchange for an equal amount of other federal lands outside the national forest system. The 1897 Act was one of the earliest statutes authorizing the exchange of federal and non-federal lands to promote more efficient federal land management. Under the Secretary of the Interior's regulations a private landowner first had to "relinquish" his land to the United States as a condition to selecting federal "in lieu" land in exchange (as opposed to the simultaneous exchange of deeds under modern land exchanges). These relinquished lands were referred to "base lands". However, for a variety of reasons (perhaps because the later Acts of June 6, 1900, 31 Stat. 588, 614, and March 3, 1901, 31 Stat. 1010, 1037, restricted the kinds of federal lands available for selection), many private owners who had conveyed their base lands to the United States either never made a formal selection of equivalent federal acreage or, if they did, their selection was not approved. By the Act of March 3, 1905, 33 Stat. 1264, Congress repealed the 1897, 1900 and 1901 acts, but expressly preserved the rights of landowners who had relinquished their lands and had either made selections or had approved applications pending for selected federal lands.

Unfortunately, none of the foregoing acts, or any other statute, expressly directed or authorized the Secretary of the Interior to reconvey the relinquished lands to the owners or to issue appropriate disclaimers of interest in such lands if selections were not completed. Nevertheless, formal written disclaimers were issued over the years in a number of cases on an arbitrary and inconsistent basis. In the vast bulk of cases, however, record title remained in the United States and no action was taken by either the original owners, their heirs or assigns, or the United States to clarify the record title. The courts, however, when presented with a dispute, consistently held that the original relinquishment was "conditional", and that the United States held only bare record title with the equitable title remaining in the original grantors, their heirs or assigns. That principle was most recently affirmed last year by the United States Court of Appeals for the Ninth Circuit in *State of Oregon* v. *Bureau of Land Management*, 876 F.2d 1419.

In 1922 and 1930[2] Congress enacted legislation to provide simple, alternative means to remedy the situation by authorizing the Secretary to complete the exchanges or to issue timber cutting rights or quitclaim deeds to claimants who elected to seek such relief. In 1950 the Chief of the Forest Service reported to BLM that because the situation was increasing "the administrative problems of the national forests and undoubtedly affects the revenues of the counties, the Forest Service believes that it would be in the public interest if it could be corrected" by taking "the action necessary to restore title in the former owners". The Assistant BLM Director responded that the 1930 Act provided an adequate vehicle for the issuance of quitclaim deeds. (Attachment C) Although action under those acts cleared title to about 45,000 acres of base lands, it did not completely resolve the problem, presumably because many of the original grantors died and their heirs, if any, were unaware of their equitable claim to the land, or because of the lack of adequate publicity of the remedial legislation. In any event, title to some 27,507 acres of base lands scattered throughout 10 western states presently remains clouded and essentially unmarketable—19,870 acres in National Forests and 7,637 acres of former National Forest lands now administered by the BLM.

I should note at this point that the outstanding residue of base lands was reduced substantially in 1986 when, as a result of litigation initiated by the State of Montana, the Department of Justice entered into a stipulated judgment disclaiming the federal interest in some 16,000 acres of base lands in Montana administered by the Forest Service, BLM and the National Park Service. (Attachment D).

The most recent congressional effort to deal with the problem was the so-called "Sisk Act" of July 6, 1960, 69 Stat. 534, 535. That Act, apparently prompted by concern over what was viewed as abusive use of the 1922 and 1930 acts, repealed the 1922 Act, prohibited any further quitclaiming of base lands under the 1930 Act, and established a procedure by which claimants, upon application, would receive $1.25 per acre for their base lands plus interest calculated on several different bases. The compensation for roughly half of the approximately 27,500 acres of outstanding base lands would have been about $1.30 an acre, while the remainder would have been entitled to a maximum of $4 per acre. This compensation was less than the cost of complying with the application procedures, including a title report, which we estimate at about $20 an acre.

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[1] The texts of this statute and other statutes cited in this testimony are set out in Attachment B hereto.

[2] Acts of September 22, 1922, 42 Stat. 1017; April 28, 1930, 46 Stat. 257.

The committee reports on that legislation made it clear that it was enacted on the mistaken legal premise that the United States held full, unqualified title to the base lands. Thus, this Committee reported that: [3]

> . . . the committee does not understand or believe that after a lapse of 60 years during which the Forest Service, the National Park Service, and other Government agencies have administered these lands and Congress has appropriated funds for their management, improvement and protection, there can any longer be doubt that they have been, in law as in fact, fully accepted by the Government and that the former owners' claims to continued ownership are without merit or equity.

This legal assumption has subsequently been rejected by the courts. *State of Oregon* v. *Bureau of Land Management, supra; Udall* v. *Battle Mountain Company,* 385 F.2d 90 (9th Cir. 1967); *Soda Flat Company* v. *Hodel,* 670 F.Supp. 879 (E.D. Cal. 1987).

Not only was the legal assumption underlying the Sisk Act invalid, but its language was ambiguous with respect to its scope and effect. We believe that the Act was intended to apply only to the pending contract selection rights under approved applications which were "preserved" by the 1905 Act, while the Forest Service contends that it applies to all base lands that were ever relinquished pursuant to the 1897 Act The Ninth Circuit Court of Appeals appears to have rejected the Forest Service view in *Udall* v. *Battle Mountain Company,* 385 F.2d 90, 96 (1967).

Another area of uncertainty is whether the Act was intended to effect a legislative "taking" of the outstanding claims and, if so, whether the establishment of their fair market value by Congress, rather than the courts, was constitutional. An opinion by the Congressional Research Service in 1974 concluded that Congress lacks the power to determine fair market value for legislative takings. (Attachment E).

As to whether the Sisk Act was intended to "take" all base lands, as the Forest Service sometimes has claimed, here again its practice has been inconsistent, inasmuch as, to the best of our calculations, the Forest Service has purchased some 1,700 acres of base lands from claimants subsequent to the Sisk Act, lands which they sometimes claim was legislatively "taken" by that Act.

It is apparent that the Sisk Act's attempt to resolve the problem has been a total failure. As with the earlier legislation, adequate publicity was lacking. Moreover, even if all potential claimants had been adequately notified, the opportunity to lose money by availing themselves of its provisions obviously was not attractive, since, to the best of our knowledge, only one applicant ever filed any claims under the Act and they were rejected.

In summary, the present situation is that, despite their equitable rights, many of the private claimants may be precluded from asserting any claims under the Tucker Act and the Quiet Title Act of 1972 because of the statutes of limitations applicable to such claims (6 and 12 years, respectively) and those who may not be barred face lengthy, expensive litigation to vindicate their claims. Attachment F to my statement is a letter to Representative Vento from Mr. James Parker of Bakersfield, California detailing the background of the Soda Flat case which I have previously cited, pointing out that it took 11 years of litigation at a cost of over $65,000 for one of the base land claimants to quiet title to lands which the Forest Service was claiming. Consequently, unless the federal agencies were to launch multiple, voluntary quiet title actions (which they apparently are not willing to do and which would be an expensive, inefficient solution in any event), the claimants' titles to the base lands will remain clouded and unmarketable. In this regard I should note that we have been advised by the American Land Title Association that a number of its member companies support S. 2816 because it would resolve uncertainty and inequity in connection with title insurance policies that have been issued on many of these base lands. We expect them to file a statement for the record.

The result of Congressional failure to resolve this problem will be that the United States in practical effect will have received a massive windfall of 27,500 acres of land without one cent of compensation to the original grantors or their successors in interest. The Forest Service and the BLM have sold some of the lands to third parties, sold timber from many others, and otherwise erroneously asserted the prerogatives of an owner. Moreover, the inequity has been aggravated because relief has been limited to piecemeal, private bills. The resulting inequity is no better illustrated than by the recent Montana litigation I mentioned earlier, by which the Justice Department, presumably with the concurrence of the federal agencies, cleared the federal cloud on some 16,000 acres of base lands.

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[3] S. Rep. No. 1639, 86th Cong., 2d Sess. (1960) at 4.

Consequently, we believe that the most simple, efficient and effective way to clear the local land records and do equity to all concerned is for Congress to enact generic legislation along the lines of S. 2816, which Senator Garn has introduced at our request. I should add that some 300 landowners have written their Senators and Congressmen urging support for the bill.

S. 2816 would disclaim any federal interest in a verified list of base lands and require the Secretary of the Interior to issue appropriate disclaimers of interest to the original grantors, their heirs and assigns, and to file such disclaimers in the states and counties where the base lands are located. Claimants can then sort out their respective titles under state law unburdened by any federal claims. Where no claimants come forward the lands would probably escheat to the state. (There appear to be about 2,000 acres in this category). Any party accepting the benefits of the Act would be deemed to have waived any claim for damages against the United States or its agents for actions taken while the title status of the base lands was unresolved.

Finally, in order to protect the national interest in base lands which have been included in federal preservationist or other environmentally important land management units, which the bill characterizes as "nationally significant lands", such lands are exempted from the bill's disclaimer provisions for a reasonable period and the Secretary is given authority to acquire such lands if he so chooses. If the Secretary declines to do so, the lands would become subject to the Act's basic disclaimer provisions. We have identified some 1,163 acres of land which were in National Forest wilderness areas in California and Oregon as of the early 1980's, as well as 120 acres which were in national parks in California at that time. These figures may be revised upward somewhat in light of subsequently enacted wilderness legislation and the designation of wilderness study areas by BLM under the Federal Land Policy and Management Act, although when the BLM submitted its inventory of base lands to the Senate Appropriations Committee in 1986 it only specified 80 acres that it felt should be retained. We have also identified some 440 acres of land in Oregon presently administered by the Forest Service which recently have been recommended for classification as critical habitat for the spotted owl. Consequently the Subcommittee may wish to consider whether S. 2816 should be amended to authorize the acquisition of those lands, as well as other categories of land which the Subcommittee may consider to have national significance.

Mr. Chairman, we began discussions of our proposal with the Forest Service and the BLM early last Fall in an effort to reach a consensus, if possible, on an appropriate legislative approach. Those efforts have continued subsequent to the House hearings on Rep. Lagomarsino's companion bill, H.R. 4429, which we hope may be marked up and reported to the full Committee this week. As a result, there is agreement that the bill should be amended to (1) protect any interests granted to third parties, such as rights-of-way, or any federal uses authorized while the United States assumed it had title, (2) expand the Secretary's acquisition authority for nationally significant lands to include exchange authority, and (3) authorize the Secretary to designate additional lands, other than those already in a preservation management system, which have important resource values requiring federal ownership as "nationally significant lands."

The Forest Service initially suggested that it should adjudicate titles to the remaining base lands, retaining the discretion to determine whether lands should be disclaimed. We believe that such an approach would be wholly inappropriate. First, not only do we strongly believe that the Forest Service should not inject itself into adjudicating land titles, which is a matter peculiarly unique to state law, but it is clear that such a procedure would be unnecessarily cumbersome and expensive and would probably discourage many claimants from pursuing their claims, particularly when faced with having their rights adjudicated by an adverse claimant. It appears that the Forest Service may have modified its position so that they only want to assert the prerogative to retain nationally significant lands without paying compensation where they find that the claimants cannot meet certain criteria.

Second, we disagree with the criteria that were originally suggested by the Forest Service for a claimant's eligibility to quiet title, which we believe would only apply to no more than 2,000 acres of the 19,870 acres of base lands within national forest boundaries because the criteria are so narrowly drawn that few present claimants could qualify. For example, the most restrictive condition is that no disclaimers would be granted where a claim of title is derived from purchase of the base lands at a tax sale even though such title is valid under state law. Similarly unrealistic is any requirement that a claimant have paid taxes on the property for a specified period, particularly since the Forest Service in many cases has opposed efforts of claimants to add the lands to the tax rolls. Any rigid occupancy requirements would also be unfair, inasmuch as many of the base lands are in mountainous areas lacking access. Most significantly, any such conditions are based on the erroneous legal assumption that the United States has full ownership of the base lands, even though every court that has considered the question has rejected that position. Moreover, there is no equitable or policy justification for any such restrictive conditions.

The Forest Lieu Selection Committee is prepared to continue work with the Forest Service, the BLM and the Subcommittee staff in order to produce a workable, equitable, long overdue legislative solution to this problem.

Mr. Herndon and I will be pleased to try to answer any questions the Subcommittee may have.

Senator WIRTH. Thank you.

Mr. Van Brocklin.

STATEMENT OF ROBERT VAN BROCKLIN, SOUTHEAST ALASKA ANCSA LAND ACQUISITION COALITION, INC., PORTLAND, OR

Mr. VAN BROCKLIN. Thank you.

Mr. Chairman, members of the committee, as I mentioned, my name is Robert van Brocklin, and I appear today on behalf the Southeast Alaska ANCSA Land Acquisition Coalition or SAALAC. SAALAC chairman, Raymond Roberts, unfortunately, was unable to be here today, but has submitted written testimony to the committee related to S. 2543, which I encourage you to review.

As Mr. Roberts notes, SAALAC represents about 4,000 Alaska natives who were unfairly denied the right to organize corporations under the Alaska Native Claims Settlement Act of 1971 or ANCSA. These natives live in or come from the villages of Haines, Ketchikan, Petersburg, Tenakee Springs, and Wrangell. The 4,000 Alaskan natives represented by SAALAC constitute about 5 percent of all Alaskan natives who were enrolled under ANCSA.

The promise of ANCSA has not been fulfilled for these natives. As a consequence of the way in which ANCSA was interpreted and implemented, they have no access to their historical places, their burial sites, and other lands that have great meaning to them.

As at-large shareholders of Sealaska Corporation, they receive less than $100 per year in dividends, while many village corporations in Southeast Alaska distribute 100 times that much or more to each of their shareholders. Certainly some equitable compensation is in order for the SAALAC villages.

You might well ask, well, if this inequity has existed over all these years, why did they not do something about it sooner. The answer is they tried. Tenakee Springs and Haines tried to become village corporations. Later Tenakee tried to become a group corporation. In each case those applications were denied. Ketchikan has also sought native corporation status through Sealaska Corporation, but Sealaska refused to file that application.

You might also ask if we review the treatment of these villages under ANCSA, why not others. Will this not open the floodgates? The answer lies in the way ANCSA was written and implemented.

In short, it has treated Southeast Alaska villages differently than all other Alaska villages.

The Interior Department's Alaska Native Claims Appeals Board has determined that there can be no village corporations in Southeast Alaska that were not listed expressly in ANCSA, regardless of the quality of their applications. You were either listed in the statute as an eligible village or you were not.

The SAALAC villages have tried to challenge this narrow interpretation of ANCSA, but it takes money to finance legal and lobbying activities. It was not until recently that other organizations joined in support of the SAALAC villages' efforts.

Section 6 of the bill before you today would authorize a study of the SAALAC villages' treatment under ANCSA. When the study is completed, if it acknowledges the inequities in ANCSA that the SAALAC villages claim exist, the SAALAC natives intend to confer with the Interior Department, the Forest Service, loggers, environmentalists, State of Alaska officials, native organizations and corporations and others, and, of course, with Congress and its staff to craft an acceptable compensation proposal.

The SAALAC natives recognize that the political realities related to land allocations in Southeast Alaska have changed since 1971 and that crafting an acceptable remedy will require creative thinking. They also know that the compensation they may ultimately receive may be somewhat different than that which ANCSA provided to other Southeast villages. That is why SAALAC seeks a process that would first require that an equitable claim be found and then, and only then, permit them, in consultation with others, to explore a broad range of ideas about an appropriate remedy.

Let me emphasize that no allocation of Federal money or assets or approval of any other remedy is authorized by the bill before you today. Furthermore, any such allocation or remedy would need your approval before it could occur. Further, in response to concerns raised by the Interior Department and the Forest Service about this bill and the House companion bill, we have drafted substitute language. We believe that language, which we have shared with the Interior Department and Forest Service, addresses their concerns. We would be happy to share a copy of it with the committee.

Again, the bill will merely provide the SAALAC natives with an opportunity to make their case for why an equitable claim for compensation exists. If that claim is found, SAALAC will work with others to craft a remedy.

I hope you will give them that chance.

Thank you, Mr. Chairman and members of the committee, for permitting me to expand upon Mr. Roberts' written statement.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF RAYMOND ROBERTS, CHAIRMAN, SOUTHEAST ALASKA ANCSA LAND ACQUISITION COALITION, INC.

Mr. Chairman and members of the committee:

My name is Raymond Roberts and I am the President of Southeast Alaska ANCSA Land Acquisition Coalition, Inc. or "SAALAC." SAALAC welcomes the opportunity to comment on Section 6 of S. 2543, and we congratulate Senator Murkowski for introducing the bill. We look forward to working with you to achieve the enactment of Section 6 of the bill.

I. INTRODUCTION

Let me begin by explaining who the SAALAC villages are and why we are here.

SAALAC is a nonprofit corporation organized under Alaska law to seek a legislative solution to the plight of the some 4,000 Natives enrolled to the five villages of Haines, Ketchikan, Petersburg, Tenakee Springs and Wrangell.

Our members have two main things in common:

First, we are Tlingit and Haida Indians who trace our roots to historic villages; and

Second, those villages were denied Native Corporation status and land under the Alaska Native Claims Settlement Act or "ANCSA."

We offer this testimony today in order to ask a simple thing: that Congress order a study of why our villages were excluded from Native Corporation status. We ask for a study because we believe there is no reason why we were treated inequitably. We recognize, however, that what is clear in Southeast Alaska may not be clear in Washington, D.C. We believe that an objective study of our plight will settle once and for all the question of the treatment we should have been entitled to under ANCSA.

In particular, we believe an objective study of the history and status of the five villages and their treatment under ANCSA will show the following:

A. Historical. We believe the historical record will clearly show that each of the five villages was:

(1) The locale of a historically identifiable band or tribe of Tlingit and Haida Indians, distinct from and often hostile to bands or tribes in neighboring villages.

(2) Recognized by the federal government as a place where Natives have resided at least since the purchase of Alaska from the Russians.

(3) Impossible to distinguish historically from other Southeast Native villages that achieved Native Corporation status. In particular, the historical status of the Urban Corporations of Juneau and Sitka was identical to that of the five SAALAC villages.

B. Inadvertent Exclusion from ANCSA. We believe that the study will show the exclusion of the five SAALAC villages from ANCSA Native Corporation status was probably inadvertent and not based on any distinction between the five villages and other communities that were afforded such status.

C. Treatment under ANCSA. We believe that the study will show that each of the five SAALAC villages was unfairly treated by the federal agencies that administered ANCSA. In particular, we believe the study will show:

(1) That SAALAC members each enrolled to the village to which they claim historical or residential roots, and did not enroll as "at large" shareholders.

(2) That at the time of the enrollment process, SAALAC members were not informed that there would be adverse consequences from enrolling to Southeast villages that were not listed in ANCSA, even if they might have had ties to villages that were so listed.

(3) That the applications of Tenakee Springs and Haines for Village Corporation status were unfairly denied based on a misinterpretation of ANCSA by the Alaska Native Claims Appeals Board.

(4) That the SAALAC members received significantly less than they were entitled to under ANCSA, and that their "at large" status has resulted in an unfair deprivation of benefits that has adversely affected the economic status of the SAALAC members.

II. DISCUSSION

I would like to briefly discuss the evidence we think supports our conclusions.

A. Historical Record. Each of the SAALAC villages is historically identifiable as an ancient Native village site. For example, Ketchikan, a Tinglit name, is the site of the Tongass tribe's village, for which the Tongass National Forest is named. It is ironic that members of that tribe were denied any land in the Tongass under ANCSA. In 1905, the federal government granted a reservation to the Tongass tribe in tideflats in Ketchikan that was used by them to build homes and land fishing boats. However, unlike all other reservations in Alaska that were extinguished under ANCSA (other than Metlakatla), the Ketchikan Natives, because they did not have Native Corporation status, were unable to elect to take this reservation in lieu of other ANCSA benefits. The Tongass tribe is historically distinct from the neighboring village of Saxman, which has village status as Cape Fox Corporation, and whose present village site is within territory that historically belonged to the Tongass tribe.

The Wrangell Natives are the subject of another of the many ironies that punctuate the SAALAC Natives' ANCSA experience. John Muir, a renowned early environmentalist, visited Wrangell in 1879, just after the United States government came to Alaska. Here is how he described the Wrangell Natives' way of life:

> "The Wrangell village was a rough place * * *.
>
> "Indians, mostly of the Stickeen Tribe, occupied the two ends of the town * * *.
>
> "Yonder you see a canoe gliding out from the shore, containing perhaps a man, a woman and a child or two, all paddling together in natural, easy rhythm. They are going to catch a fish, no difficult matter, and when this is done their day's work is done. Another party puts out to capture bits of driftwood, for it is easier to procure fuel in this way than to drag it down from the outskirts of the woods through rocks and bushes. As the day advances, a fleet of canoes may be seen along the shore, all fashioned alike, high and long beaklike prows and sterns, with lines as fine as those of the breast of a duck. What the mustang is to the Mexican vaquero, the canoe is to these coast Indians. They skim along the shores to fish and hunt and trade, or merely to visit their neighbors, for they are sociable, and have family pride remarkably well developed, meeting often to inquire after each other's health, attend potlatches and dances, and gossip concerning coming marriages, births, deaths, etc."

Wrangell's status as a historical Native village was expressly recognized by the federal government on at least two occasions. The first time was in 1905, when the Land Claims Office expressly excluded Wrangell Native community land from the townsite being platted for non-Natives and, in so doing, explicitly recognized the Natives' land use and occupancy. The second time was in 1955, when the United States Supreme Court, in *Tee-Hit-Ton* v. *United States*, 348 U.S. 272 (1955), a case brought by the Wrangell Natives, recognized their Native status and historical use of a large land area that was the subject of the case.

The Tenakee Springs Natives' existence, and use of the land on which the town of Tenakee springs rests, was recognized by a 1935 Executive Order (Executive Order No. 7179) of President Franklin D. Roosevelt that excluded land on which they resided from the Tongass National Forest.

Similar history applied to Haines and Petersburg.

B. Inadvertent Exclusion from ANCSA. At the time ANCSA was enacted, the Native population of Ketchikan, Petersburg and Wrangell was admittedly less than the non-Native population of those communities. But so too, were the villages of Juneau, Sitka, Kodiak and Kenai, all of which were given ANCSA Urban Corporation status. With respect to Tenakee Springs and Haines, the facts are less clear, but there were sizable non-Native population in those villages as well.

In certain versions of ANCSA, only villages that met the majority Native requirement (later enacted as Section 11(b)(2) of ANCSA) were to be granted Native Corporation status and land and cash benefits under ANCSA. Although there is no official legislative history on point, it is apparent from discussions with some of those involved in the enactment of ANCSA that certain Native communities, notably Kodiak and Kenai, vehemently protested their potential exclusion from such benefits on the grounds that they were Native communities to which large numbers of non-Natives had moved. Given the inability of the Natives to exclude non-Native settlers, and the lack of cooperation by the United States Government in enforcing the exclusion of non-Natives from Native land, these communities argued that their Native population, which had never moved from their ancient homes, should not be denied ANCSA's benefits due to the uncontrolled and often illegal activities of others. Thus, the Urban Corporation was born.

Eventually, four communities—Kodiak, Kenai, Juneau and Sitka—received ANCSA Urban Corporation status. ANCSA, however, provided no mechanism to establish further Urban Corporations, even if there were villages that had essentially the same historical characterists as the four listed villages. In particular, there is no statutory mechanism for the five SAALAC villages to prove their entitlement to be Urban Corporations.

It is apparent that there was no real policy reason for preventing other Native villages to attain Urban Corporation status. Land for existing Urban Corporations comes out of the 2,000,000 acres to be withdrawn and conveyed under Section 14(h) of ANCSA. This amount is fixed; either it is to be conveyed to the five types of entities (cemetery sites and historical places, Group Corporations, Urban Corporations, Native homesites and Native allotments) described in Section 14(h) or it goes to the Regional Corporations on a pro rata basis. Indeed, the Secretary of the Interior even had discretion to lower the amount of land conveyed to Group and Urban Corporations, discretion he exercised in the case of Group Corporations. Thus, additional Urban Corporations would not have enlarged the land settlement embodied in ANCSA or otherwise taken away land anyone else had a right to expect.

Nonetheless, the fact is that there was and is no mechanism in ANCSA to add Urban Corporations. It is SAALAC's belief that this omission was inadvertant—that the provisions for Urban Corporations were added so late in the legislative process leading to ANCSA's enactment that procedures for adding other similarly situated villages were not explored.

The exclusion of the five SAALAC villages from the list of village Corporations in ANCSA is less easy to explain. SAALAC suggests that this was due either to inadvertent mistakes on the part of the Tlingit & Haida representatives involved in the negotiations of the final bill or to an unfortunate misunderstanding of the history of the villages. In any event, there is no question that there is no justifiable reason for exclusion.

C. Treatment under ANCSA. The Interior Department's enrollment procedures were established to determine the appropriate village to which each Native should enroll. In the case of SAALAC's members, that village was one of the five SAALAC villages. Each SAALAC member received back from the Interior Department an enrollment form listing one of the five SAALAC villages. Yet the form did not inform these Natives that the village listed was ineligible for Native Corporation benefits.

Furthermore, the enrollment process grouped members of different clans together regardless of their tribal roots. As a result, these Natives were not given an opportunity to register in a manner that was consistent with tribal custom and cultural heritage.

Of our villages, only Tenakee Springs and Haines had a realistic chance to show that they met the Village Corporation requirements of ANCSA Section 11(a)(3). The other three villages clearly had populations that were majority non-Native. Both Tenakee Springs and Haines made timely applications for Village Corporation status. Both applications were processed and the only issue in the proceedings was whether a majority of each village's population was Native. The Native character of the two villages was not challenged.

Then, on April 26, 1974, the Alaska Native Claims Appeals Board or "ANCAB" requested a briefing from the villages of Haines, Tenakee Springs and Kasaan (a village listed in Section 16(a) of ANCSA whose eligibility was being challenged) to determine whether Section 11(a)(3) applied to villages in the Southeast region. Over strong argument from Haines and Tenakee Springs, the ANCAB ruled, on August 30, 1974, that ANCSA Section 11 did not authorize the establishment of additional Village Corporations in the Southeast region. Tenakee Springs' subsequent application for Group Corporation status was denied as untimely, even though up until that time it had been diligently pursuing the alternative of Village Corporation status.

Ketchikan also sought ANCSA corporation status through Sealaska Corporation, but Sealaska refused to file that application on Ketchikan's behalf and insisted it be dropped.

Since that time, we have pursued our claims through such means as were available to us. Isolated and without funds, our complaints have barely been heard. Organizations such as Sealaska Corporation (the Regional Corporation for our region), the Tlingit & Haida Central Council, the Alaska Native Brotherhood and Alaska Native Sisterhood, and the Alaska Federation of Natives were preoccupied with other legislative priorities and, until recently, have not been responsive to the plight of the SAALAC Natives.

Meanwhile, Village and Urban Corporations in Southeast have been among the most successful Native Corporations in Alaska and, consequently, have made a real difference in the economic circumstances of their shareholders. SAALAC Natives, despite being historically comparable to Natives from these villages, have received only whatever small amounts Sealaska distributed to its shareholders—amounts it must share with southeast village and Urban Corporation shareholders, who are also Sealaska shareholders.

SAALAC Natives have not received one dime from Sealaska that did not also go to shareholders of Goldbelt and Shee Atika, the Urban Corporations for Juneau and Sitka. But those corporations have been able to distribute significant amounts of money to their own shareholders as dividends because they have Urban Corporation status and 23,040 acres of prime timberlands. There is no justification for this unequal treatment.

SAALAC Natives have received some funds directly that were distributed to village Corporations (rather than directly to Village Corporation shareholders) by Sealaska. But without a land base or corporate entity, that money could not be used to capitalize a business, fund education programs, assist the elder, or purchase land for housing. In contrast, the Village Corporations could use these funds to build their businesses. Thus, many Southeast Village Corporations are paying dividends to their shareholders of between $1,000 and $20,000 per year (per 100 shares held). SAALAC shareholders, on the other hand, received about $80 (per 100 shares held) that Village Corporation shareholders did not receive directly last year—hardly a comparable amount!

In conclusion, the 4,000 SAALAC Natives, who constitute about five percent of all Alaska Natives, were inequitably treated under ANCSA. What we ask now is for Congress to review the experience of these villages in order to verify the inequity I have described and we know has occurred. Given the magnitude of the inequity, the length of time it has persisted, and the plight of our shareholders, we believe that we are not asking very much when we ask the federal government to review our ANCSA experience.

SAALAC's members and representatives look forward to working with you to assure that a thorough and meaningful review of the SAALAC villages experience under ANCSA takes place.

We thank the distinguished members of the Committee, and you, Mr. Chairman, for considering Section 6 of S. 2543 and hope it will receive favorable treatment by Congress this year.

Senator WIRTH. Thank you very much, Mr. Van Brocklin.

Senator Garn.

Senator GARN. Thank you. I have no questions.

I would like to thank Mr. Panos and Mr. Muys for their testimony. Mr. Panos, of course, is an expert on the performing arts. I am not. I am an expert on the area. And it really is one of the more beautiful areas of our State and would certainly lend itself incredibly well with the type of operation and theater that the University of Utah could provide in its management in the performing arts area.

I am hopeful that people on the committee and the Congress will recognize what an extremely good mix it is. I certainly look forward myself to being in that type of setting and seeing the performing arts. Some of the things we do, just taking the Utah Symphony up to Snow Bird or Park City or Deer Valley and so on. And the combination of the outdoors with the performing arts is something very special and particularly in this Slick Rock area around Moab.

I thank you, Mr. Chairman, very much for your courtesy.

Senator WIRTH. Thank you very much, Senator Garn.

Gentlemen, we thank you very much for being with us. If you have any further input for the committee, we look forward to hearing from you. Thank you very much.

If we might have our final panel join us at the table. Mr. Gary Wright, Aspen, Colorado; Mr. Dick Gustafson, Eagle County Commissioner, Eagle, Colorado; Mr. Timothy Whitsitt, the Assistant Pitkin County Attorney in Aspen, Colorado; Mr. Rich Harr, director of the Corporate Land Division of the Homestake Mining Company in Lead, South Dakota; and Mr. Gerald Fort, president of the Spearfish Canyon Owners Association in Mitchell, South Dakota.

Maybe what we might do, I have noted in summary that both Mr. Harr and Mr. Fort have come to testify on behalf of S. 2474, is that right, gentlemen?

Mr. FORT. That is correct.

Senator WIRTH. Do you all want to provide a summary or do you want—whatever is convenient for you.

I notice you are both in support. Have you seen the amendments, by the way, on the House side? Do you have a reaction to those?

Maybe you might want to comment on those. I will put your full statements in the record, and you all can get out of here, too, if you would like to do that.

STATEMENT OF RICH HARR, DIRECTOR, CORPORATE LAND DIVISION, HOMESTAKE MINING CO., LEAD, SD

Mr. HARR. Okay, thank you, Mr. Chairman. I will just be very brief. My name is Rich Harr. I am the director of the Corporate Land Division for Homestake. We did work with the Forest Service on those amendments to the House bill, and I had intended to ask that possibly you use that version for the markup on your Senate bill.

[The prepared statement of Mr. Harr follows:]

PREPARED STATEMENT OF RICH HARR, DIRECTOR, CORPORATE LAND DIVISION, HOMESTAKE MINING CO., LEAD, SD

Chairman Bumpers and Members of the Subcommittee,

My name is Rich Harr and I am the Director of the Corporate Land Division of the Homestake Mining Company, headquartered in Lead, South Dakota.

Several years ago Homestake performed an inventory of its land and mineral resources in South Dakota and Wyoming, many of which the company has owned since before statehood. The goal of that inventory was to determine whether Homestake should retain all land and mineral assets, or whether better use of those assets could be made by conveying some of them to adjoining landowners such as the U.S. Forest Service. As the Subcommittee may be aware, the Black Hills National Forest in South Dakota is one of the most inholding riddled forests in the nation, and land consolidation is one of the Forest Service's primary goals.

As a result of Homestake's inventory, we identified approximately 12,274 acres in seven separate tracts that were deemed surplus to our needs, but which the Forest Service believed would confer benefits on the public if transferred to National Forest ownership and management. However, in discussing the lands with the Forest Service, it became apparent that they did not currently have, nor were they likely at any time in the foreseeable future to have, the approximate $10 million necessary to purchase the 12,274 acres. Accordingly, it became evident that our mutual objectives could only be satisfied by working out some sort of land exchange.

The proposal before you today in the form of S. 2474 represents the end product of our efforts, and we believe it will result in an exchange which will benefit the Forest Service, Summit County (Colorado), the Town of Frisco (Colorado), the Copper Mountain and Keystone ski areas (Colorado) our company, and the general public.

In particular, the Forest Service and the public will benefit from this exchange by acquiring two large tracts of land in South Dakota. The first parcel comprises some 1,250 acres of land which Homestake has owned and managed along some 20 miles of the streambed of Spearfish Canyon since 1876. Spearfish Canyon is perhaps the single best known stream and trout fishery in the State, and has long been a popular tourist destination for recreationist of all sorts. It has recently been designated a National Forest Scenic Byway and receives some 200,000 visitors each year. That visitation can be expected to grow significantly with the increase in tourism related to legalization of gaming in nearby Deadwood. If Members would care to see them, I have some photos of the canyon which depicts its magnificent scenery.

Although not as well known as Spearfish Canyon, the approximate 8,125 acre Piedmont parcel which begins only seven miles northwest of Rapid City is perhaps the real environmental gem of this proposal. Composed largely of gentle uplands with excellent mule deer habitat, the parcel is bisected by the highly scenic North and South Stagebarn Canyons. Under our stewardship, these canyons have seen little activity or visitation of any kind and are essentially pristine environments which hold a wealth of ecological and geological treasures, including caves, dramatic cliffs, riparian habitat and wildlife. For that reason, environmental groups in South Dakota are most anxious to see the Piedmont area come into public ownership, and I would like to submit letters from some of the organized groups in support of the proposal.

On the Colorado side of the exchange, Homestake is planning to sell all but 58 acres of the 868 acres we would acquire to local government and ski areas. Our selling price would be the appraised value of the land as determined in the exchange plus selling costs, so we will not make a profit on the transaction. More precisely, we would immediately dispose of all but 58 of the 868 acres to the following entities:

One hundred and four acres would be conveyed to Summit County in the vicinity of their existing county shops and maintenance facilities southeast of Frisco. The county currently leases the bulk of this parcel from the Forest Service, so its transfer to the county makes good sense.

Twenty-three acres of the 81 acre so-called Frisco Triangle parcel would go to the Town of Frisco for future public uses, including a wetlands study and aquatic center. The remainder of the parcel would be retained by Homestake for eventual expansion of the Frisco community.

The 217 acre parcel on Frisco Bay would be sold to the Town of Frisco for the development of a golf course and other public recreational facilities provided that the Town and the county can agree on a land use plan for the tract. The House has added an additional protection that such plan must emphasize recreation and open space. If the counties cannot reach agreement on that, we would not acquire the land and would be compensated for its value in cash or timber credits.

The parcels adjacent to the Keystone and Copper Mountain ski areas (which total 466 acres in the House version of the bill) would be sold to the areas to assist in their future planning and development. Much of this land is already under lease to the areas for parking, employee housing, buildings, a golf course, and other facilities, so its privatization is logical.

With respect to the Keystone and Copper Mountain parcels, we would ask the Subcommittee to make the same modification made by the House. It involves a 234 acre reduction at copper Mountain (Map #3) because avalanche hazards exist in areas previously thought suitable for development, and a compensatory 71 acre addition at Keystone which largely consists of improved land the ski area has under permit from the Forest Service.

Since the House hearing we have also agreed to several compromise amendments which address concerns raised by the Forest Service and the public. In particular, we have stipulated that:

We will limit our future exercise of mineral rights retained in Spearfish Canyon, if they are ever developed, to methods which will not disturb the land surface and which will protect the values of the canyon as set forth in the legislation;

We will not acquire any mineral rights in Colorado;

We are not planning any significant additional use or withdrawal of water in Spearfish Canyon, and will work cooperatively with the Forest Service and the State of South Dakota to address future water uses and needs in the canyon. This has been further explained in a letter to Forest Service chief Dale Robertson which I hereby submit for the hearing record. On that point, Mr. Chairman, I should also note that the basic system controlling water flows in the canyon has been in place for 90 years now, and is detailed in a photo documentary which was presented to your staff several weeks ago. The system works very well and has perpetuated the best trout fishery in the State at the same time as it supplies water and electric power for our mining activities as well as the municipal water supply for the communities of Lead, Deadwood, Central City and Spearfish. We see nothing on the horizon that would change that use.

Mr. Chairman, I believe the foregoing pretty well sums up the land exchange proposal and why Homestake believes it is a good deal for all involved. We particularly believe that the public will benefit from the 12,000 acres to be acquired in South Dakota and if things go smoothly with this exchange may propose additional consolidations which would complete National Forest holdings in South Dakota and Wyoming and facilitate long-term management and conservation interests.

Because we have agreed to the above described changes since S. 2474 was introduced, we would respectfully request that you consider using H.R. 4567 as passed by the House as your markup vehicle and simply forward the legislation to the President for his signature. To the best of our knowledge the House-passed version has the unanimous support of our congressional delegation, the Forest Service, and all significant environmental and landowner groups in our State. We would finally request that you act on the bill as quickly as possible as we would like to begin work with the Forest Service to finalize the exchange at the earliest possible date.

Thank you for holding this hearing and granting us the opportunity to appear before you today. We sincerely appreciate your efforts to complete action on the legislation this fall.

Senator WIRTH. Does that comport with your perception of this as well, Mr. Fort?

Mr. FORT. Very much so. We very much are in favor.

Senator WIRTH. You and Mr. Harr are in agreement on that, and if we used the House language, you think that that would solve any problems that you have as well. Is that right?

Mr. FORT. That is correct.

Senator WIRTH. Do you have anything you want to add for the record?

Mr. HARR. No, I have some letters of support from the environmental community back in South Dakota and mayors of the Black Hills of South Dakota I would like to submit, if I could.

Senator WIRTH. Great. We will put that in the record.*

Senator WIRTH. Mr. Fort, we appreciate your coming in. Where is Mitchell, South Dakota?

Mr. FORT. It is in the middle of the State, Senator.

Senator WIRTH. People from South Dakota always say it is in the middle of the State, do they not?

[Laughter.]

Mr. FORT. It is about 75 miles from Sioux Falls and about 300 miles from the Black Hills.

Senator WIRTH. I went up to Sioux Falls not long ago. Senator Daschle and I were going to take a little time off and go rafting at Sioux Falls. There was not anyplace like that. Not much water.

Mr. FORT. We do not have the streams that are really good for rafting.

Senator WIRTH. Tell me where the name Spearfish Canyon came from.

Mr. FORT. They speared fish in it. There are still beautiful fish and it is a self-feeding, self-propagating brown trout stream. It is very scenic and unique in the area.

Senator WIRTH. Is it legal to spearfish or is it now——

Mr. FORT. No way.

Senator WIRTH. We are pleased to have you here, Mr. Fort. Would you like to enlighten the subcommittee, add some comments for the record? You have watched this procedure here.

STATEMENT OF GERALD M. FORT, PRESIDENT, SPEARFISH CANYON OWNERS ASSOCIATION, MITCHELL, SD

Mr. FORT. Just a couple of items. I represent a little different group. We are a group of owners in the canyon, there are some 220 cabin owners who have been on private land, on Forest Service land, and on Homestake land. And we are undergoing substantial changes with Homestake deciding to provide the land to us, so we are trying to set up in perpetuity the kind of stewardship of that beautiful canyon that Homestake has had for 114 years.

We look at the various options that are around and we feel that this land exchange with the U.S. Forest Service offers the best opportunity that we know of to maintain the beauty and grandeur and, for this country and for the many tourists and for we homeowners. The Forest Service we can work with, we feel.

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* The information referred to appears in the Appendix.

Recognizing nothing is perfect, we would love to have a guarantee of a continuous flow of water, but I do not believe the Senate controls droughts very well, so we are willing to take that chance.

Senator WIRTH. We do not control budgets very well, either.

[Laughter.]

Senator WIRTH. We will not get into that. I am sorry.

Mr. FORT. But we feel, as we look at this, the options that are available to the State and this Nation, that going with the U.S. Forest Service on this exchange offers a great opportunity for the country. Homestake has done a great job of stewardship, but they are now deciding that they are not going to be as intensive in that respect, and our homeowners' group is trying to pick that up.

[The prepared statement of Mr. Fort follows:]

PREPARED STATEMENT OF GERALD M. FORT, PRESIDENT, SPEARFISH CANYON OWNERS ASSOCIATION, MITCHELL, SD

My name is Gerald Fort. I am here at your invitation, since I am the president of the Spearfish Canyon Owners Association (SCOA). This association is a not-for-profit organization, incorporated in South Dakota. We came into being one year ago last July. Prior to that time, the Homestake Mining Company officials had publicly indicated a willingness to sell lots in Spearfish Canyon to the leasees, a long-range plan that called for a lessening of their stewardship of the Spearfish Canyon, and the hope that cabin owners would pick up on that stewardship responsibility, and the start of this land exchange with the United States Forest Service which involved about 40 leasees on Forest Service land. For your information, there are approximately 220 cabin owners in the Spearfish Canyon, most being on Homestake land, but some on Forest Service and some on deeded land. At the present time our organization has better than 150 dues-paying members, and we expect that number to grow. Nine of our directors are elected by the membership, and two are appointed by Homestake Mining officials.

The purposes of our organization, as stated in our constitution, are the following:

A. To maintain the beauty, serenity and attractiveness of Spearfish Canyon and monitor and protect the water quality and flow of Spearfish Creek and its tributaries, and to preserve in perpetuity the covenants and conditions placed upon said property by Homestake Mining Company of California;

B. To enter into any kinds of activity, and to make, execute, and carry out contracts of any kind necessary or incidental to the furtherance of its business, and

C. To promote the interests of the corporation, and carry on its business, or the purposes of attaining or furthering any of its business, to do any and all acts and things, and to exercise any and all other powers which now or hereafter may be authorized by law.

We are already involved in this stewardship responsibility, working with Homestake Mining Company and the United States Forest Service. We have established an Architectural Review Committee which reviews all aspects of construction and outside appearance of canyon property; and an Environment Committee, which has concern for canyon fire danger, and for water quality and quantity. We are geared up to keep this beautiful canyon as a state and national attraction for this next century, just as Homestake has done for the past 114 years.

The Spearfish Canyon Owners Association has sent me to this hearing as one more step related to this stewardship responsibility. Our Board of Directors, at a meeting on August 20, 1990, took an official position in support of the land exchange between Homestake Mining Company and the United States Forest Service. It is the feeling of our Board of Directors that this exchange is in the best interest of the state of South Dakota, and the vast number of visitors that enjoy this beautiful canyon from outside of our state. Our directors believe that such an exchange provides the citizenry of this nation with the best possible method for preserving this unique canyon.

Our Spearfish Canyon Owners Association is composed of persons with long-time love and concern for the canyon. As an example, I was born in Mitchell, South Dakota, and can remember vacationing in the canyon in a friend's cabin, and catching my first trout in the stream at eight years of age. My father, who was superintendent of schools in Sioux Falls, was able to purchase a one room and porch cabin in 1952 (Homestake Lease #79), added on to it as a place to retire to, and all of our family made great use of this place. When my parents passed on, the three sons were involved, and my younger brother moved to the canyon from Chicago, did some more fixing up, and was followed by my son, who had returned from Vietnam as a carrier pilot, and thought of this place as a "bit of heaven!" He did some more fixing, and then I retired after a quarter of a century as a psychological consultant to business and industry, and my wife and I returned to South Dakota, did some more renovations, and this is now my home--although I do head for Arizona when the snow starts to deepen. (By the way, I can still catch those beautiful trout in this stream after sixty-three years).

It is the hope of our organization that those who are writing this land exchange bill are taking the long view of maintaining Spearfish Canyon, as our organization is. We have a magnificent trout stream, which requires little support from state and federal fisheries. Our canyon is riparian, the stream open to all visitors, the hills and valleys full of wild flowers. Last week I counted nine busy muskrats in the stream by the house, plus two otter, and innumerable deer visit our salt lick across the stream from our cabin. The water of Spearfish Creek is pure drinking water, providing an essential source for Lead, Deadwood, and Spearfish. Right now the canyon is full of visitors from all points, coming to see the fall color changes that are unbelievably spectacular.

Present Homestake Mining officials have provided us with strong statements relating to preserving this great canyon, indicating no plans to increase water usage, and no plans for surface mining in the canyon. We have great confidence in the integrity of this Homestake management.

As one takes a long look toward the future of Spearfish Canyon, there are some concerns that need to be voiced. Is the language in this land exchange bill sufficiently tight to assure that, should a corporate raider gain control of Homestake, the canyon will not be invaded by a commercial developer or a greedy mine-owner? I have seen several examples of beauty in this United States that has been ruined by the intervention of those motivated by short-ranged greed. Having been in the business world for better than twenty-five years, I can certainly think of any number of people/organizations, whose eyes would flash dollar signs if they looked carefully at all of the resources of this beautiful canyon. We believe that we can work with the United States Forest Service to see that this does not happen.

Our organization supports the land exchange bill, as we have seen it in the form of H.R. 4567 (as amended). I do not know how you can use your language-writing skills to safeguard this canyon for another century, but it is our hope that you can.

I will be happy to respond to any questions.

Senator WIRTH. We thank you very much, Mr. Fort, and I hope that you will go down to Senator Daschle's office and harass him in the appropriate way. Will you do that?

Mr. FORT. We have been there already.

Senator WIRTH. Good for you.

Mr. FORT. Come out and flyfish in our place. We have beautiful flyfishing.

Senator WIRTH. We are going to get to flyfishing country in just a minute.

Before the two of you leave, do you have any comments on the Mt. Sopris land exchange issue that you would like to——

Mr. HARR. No, sir.

Senator WIRTH. Good, you are very wise not to get into that one. Thank you both very much for being here, we appreciate it.

Let us move on to S. 2891. Who do we have here? We have Gary Wright, and who are you representing, Mr. Wright?

Mr. WRIGHT. I represent a number of landowners who legally own and actually possess some of the property that Pitkin County is proposing to trade.

Senator **Wirth**. Is Mr. Blanning one of those people?

Mr. **Wright**. Yes, sir, he is.

Senator **Wirth**. What does Mr. Blanning do?

Mr. **Wright**. He is a mine developer and he is a citizen of Pitkin County.

Senator **Wirth**. And he owns a lot of corporations or the president of a lot of corporations?

Mr. **Wright**. I do not know that "a lot" is correct. Two or three, anyway.

Senator **Wirth**. Is he president of the Aspen-Western Corporation?

Mr. **Wright**. I am not sure if he is president of that.

Senator **Wirth**. Could you provide for the record?

Mr. **Wright**. Yes, I will.

Senator **Wirth**. Is he president of the Aspen-Western Mining Corporation?

Mr. **Wright**. I do not know what office he holds. I believe he is affiliated with that company.

Senator **Wirth**. Could you give us that?

Mr. **Wright**. I could get that information for you.

Senator **Wirth**. Could you give us that for the record?

Mr. **Wright**. Yes, sir.

Senator **Wirth**. Is he the person who incorporated the New Ophir Mining Company?

Mr. **Wright**. That was before my time. Again, I would be happy to——

Senator **Wirth**. Could you provide that for the record? And do you know who it was that incorporated the Tourtelotte Park Mining Company?

Mr. **Wright**. No, sir, I do not.

Senator **Wirth**. Is not that another one of the Aspen-Western conveyees?

Mr. **Wright**. I am not intimately familiar with all the transactions that have taken place, but I would certainly be willing to get any information that you would like.

Senator **Wirth**. Well, there is a chain of alleged land transfers that is in here, and I just think we want to make for the record who it is that we are talking about.

How about the Park Tunnel Mining and Milling Company?

Mr. **Wright**. I believe that was a corporation that was created during the mining days around the turn of the century, and I am not certain——

Senator **Wirth**. What is Mr. Blanning's relationship to that, do you know?

Mr. **Wright**. I am not certain.

Senator **Wirth**. Well, maybe you could provide all of that for the record, because all of those companies appear related to the land issue and the ownership issue. And I think if you look, at least as far as the research that we have been able to do, if you look carefully at that, they are all the same person.

But, in any case, Mr. Wright, I just wanted to establish that you represent Mr. Blanning.

Mr. **Wright**. Among others, yes.

Senator **Wirth**. I understand.

Fine, why not give us your statement for the record, and summarize in whatever way you think is appropriate. We have your statement here, which I have had the opportunity to read with all the points that you make, so we will include that in full as part of the record.

STATEMENT OF GARY A. WRIGHT, ESQ., WRIGHT & ADGER, ASPEN, CO

Mr. WRIGHT. Thank you. My name is Gary Wright. I represent landowners who legally own and actually possess a number of the properties Pitkin County proposes to trade. I am here to oppose the bill because it ignores the individual citizen's property rights.

I have been an attorney in private practice in Aspen since 1979, and I have been involved in many quiet title cases. I have twice prevailed in the Colorado Court of Appeals against Pitkin County's claim of ownership. I now represent three different defendants against whom Pitkin County has been in quiet title litigation.

I have represented numerous clients in quiet title claims with Pitkin County over the past decade. In every one of those cases, my clients ultimately kept at least a portion of the property in question.

Section 4(a) of the bill should require a warranty deed and title insurance from Pitkin County. To accept less would be irresponsible based on the title history of these properties. Further, the bill should correctly describe these properties by claim name, mineral survey number, as well as the mining district in which they are located.

It is not appropriate to withdraw these properties from mineral leasing. Most if not all of these properties were patented as mineral claims and contain mineral discoveries. There is absolutely no reason to prevent multiple use within the National Forest system.

Section 5(3) should be deleted in its entirety. The value of property is independent of what someone paid for it. The law is well settled in the area of condemnation and legislative takings, and this bill should not change it. If an individual has better title to a piece of property, current law and practice should govern. I believe it is absolutely not the Federal Government's role to clean up Pitkin County's title mess.

What is the effect of the statute of limitations? It is well settled, pursuant to Colorado law, that the statute of limitations for challenging title to a tax deed is 5 years. However, it is equally well settled that this statute of limitations does not apply against parties in possessions. For all cases, when a party other than the county is in possession of the property, the statute of limitations does not protect the county. The standard of possession is that which is appropriate for similarly situated lands.

Many individuals have purchased these claims for good and valuable consideration with the reasonable belief that the county's title is based on a void tax deed. They have taken possession. Some have had the properties surveyed and had the survey recorded. Most have tried to pay taxes or been informed that such an attempt would be futile. Some have even constructed improvements on their property.

With few rare exceptions, Pitkin County only has a vague idea exactly where these claims are located. The facts of these cases prevent the county from prevailing on their claim based on the statute of limitations.

What is the legal effect of the county's refusal to accept taxes when tendered? In the late 1970's, the county attorney wrote a memorandum to the treasurer instructing that no taxes should be accepted on certain properties. The county attorney knew that many of the tax sales at which these properties were struck off to the county did not conform with the law and were void or voidable.

The legal effect of refusal by the county to accept taxes under such circumstances has yet to be resolved. However, Colorado strongly suggests, in its legal history, that the county treasurer must accept any and all taxes tendered.

What is the relevance of the State's legislative intent of using tax sales to return properties to the tax roles? The purpose of permitting the State to sell private property is based on the legislative mandate that taxes are necessary to promote the common good.

It is the law—the law in Colorado limits what a county may do with properties that are acquired by tax deed. It provides, and I quote: "The Board of County Commissioners has the power to rent, lease, or sell such property so acquired as provided in this section."

It does not authorize the county to hold these claims as it has done in this county for over 80 years in some cases.

What is the effect of the county's ownership of these properties as an investment or when not used for governmental purpose? This question is answered by *Farnik* v. *Board of County Commissioners of Weld County,* which directs us, and I quote again: "Promptly upon acquiring real estate not needed for county purposes, steps should be taken to sell the property as provided and required by law. All county-owned property not needed for the use of the county should be sold promptly and as soon as lack of need is apparent."

What are the consequences of the county's failure to follow the statutes in effect when these properties were sold for back taxes? It is well established in Colorado that the law in effect at the time of a sale for back taxes governs its validity. In each and every case, where Pitkin County failed to follow the law in effect at the time of the sale, their title is void or voidable against the party in possession.

The most important question is who really owns these properties today. In most cases, it is not Pitkin County. As a matter of law, void tax deeds do not convey any title. The Federal Government has no business rewriting Colorado law for Pitkin County to clean up its title mess.

In most of these cases, Pitkin County will not be determined to have good title. This certainly would be a reasonable inference, based on their based litigation and settlement history.

This bill, if passed, will put the Federal Government in the position to spend substantial sums to defend Pitkin County's void titles. This bill, if passed, would rewrite Colorado law to the detriment of bona fide owners.

Thank you for the opportunity to speak today. I hope you consider my points carefully and reject this bill and protect private citizens' interests. I will submit the additional written testimony you have requested within 7 days. Thank you.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF GARY A. WRIGHT, ESQ., WRIGHT & ADGER, ASPEN, CO

MT. SOPRIS TREE NURSERY—PITKIN & EAGLE COUNTY MINING CLAIMS

My name is Gary Wright. I represent landowners who legally own and actually possess a number of the properties Pitkin County proposes to trade. I am to oppose the exchange because it ignores the property rights of my clients who have good title to the property proposed to be traded. I am here to try to assure that the United States receives good title to the properties deeded to it and further to ask that the bill respect the individual citizens property rights. I am here to specifically address several legal issues concerning title problems which exist on all or many of the "County Claims." [1]

I have been interested in Aspen's development and history since I made it my home in 1974. I have been an attorney in private practice since 1979. Although I have maintained 1 general practice, I have been involved in many quiet title cases.

I have twice prevailed in the Colorado Court of Appeals against Pitkin County's claim of ownership based on the statute of limitations. I now represent three different defendants against whom Pitkin County has pending quiet title litigation on patented mining claims located on the back of Aspen Mountain. I have represented numerous clients in quiet title litigation with Pitkin County over the past decade. In every one of those cases my clients ultimately kept at least a portion of property in question.

RE: CONGRESSMAN CAMPBELL'S BILL

Based on the review of the House version of the Bill introduced by Congressman Campbell on June 28 consider the following:

Generally:

1. Provide notice in the area newspapers giving citizens the opportunity to dispute Pitkin County's alleged title. This Notice should give the name and mineral survey number along with the township, range and section of every claim.
2. Mail a Notice to the address given by the Grantee in the most recent deed of record to any property to be included in the exchange.

Specifically:

Section 3: Deed restrict the property in perpetuity to the uses for which the Counties propose: that is: public recreation and recreational facilities, open space and riparian habitat protection, fairgrounds and such other public purposes.

Further, Deed restrict the property to reserve in perpetuity to the public the right of access in and along the Roaring Fork River for fishing and other recreational use.

Section 4: (a) require a Warranty Deed and title insurance—to require less would be irresponsible,

Particularly:

given knowledge that the County's title is derived from tax sales not conducted consistent with statutes; and,

given knowledge that many of these claims are possessed by individuals with "color of title"; and,

given knowledge that the County has refused taxes from many individuals who may have better title than the County; and,

given knowledge that the County has failed to locate, survey or take possession of these properties—in some cases for over eighty years; and,

given knowledge that the County has not even been able to obtain title insurance.

Under these circumstances no reasonable purchaser would accept a quitclaim deed without title insurance from Pitkin County for these properties--why should the United States of America?

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[1] There are 172 claims which comprise approximately 1,400 acres to which Pitkin County asserts ownership rights contrary to other individuals who are in legal possession of the claims

Further, the bill should correctly describe these properties. They are properly legally described by claim name and mineral survey number as well as the mining district in which they are located.

It is not appropriate to withdraw these properties from mineral leasing. Most if not all of these properties were patented as mining claims. Many contain valuable mineral discoveries. While it is appropriate to prevent the use of Public Lands inconsistent with a Wilderness designation--there is absolutely no reason generally to prevent multiple use within the National Forest System.

Section 5: raises some serious questions that must be satisfactorily answered before this bill should be allowed to become law.

1. How can the mere fact that title is transferred by quitclaim deed to the United States avoid granting citizens who may have better title their due process and other Constitutional rights?
2. Why should the unwarranted or uninsured conveyance shift the burden to the claimant when Colorado law may provide otherwise?
3. If the statute of limitations does not run against a party in possession based on Colorado law,[2] why should this act of Congress change this protection?
4. Is it fair and appropriate to make citizens travel over a hundred miles to litigate their title claims after Federal governmental acquisition when before such transfer sole jurisdiction rested in the county where the property is located?

Section 5. (3): should be deleted in its entirety. It is likely unconstitutional and it is certainly unfair. The value of a piece of property is independent of what someone paid for it. The law is well settled in the area of condemnations and legislative takings—why should it be any different in this case. If an individual has better title to a piece of property, current law and practice should govern. Whatever its good faith intention may have been—this provision is a sham to be used to take a citizen's property without due process or just compensation.

IT IS NOT THE FEDERAL GOVERNMENT'S ROLE TO CLEAN UP PITKIN COUNTY'S MESS

RE: LEGAL ISSUES AFFECTING TITLE

There are several significant legal questions which must be resolved to determine rightful ownership in these cases. It is accurate to say that the there are no Colorado statutes or cases that resolve these questions.

I will address the unsettled legal questions and explain how their resolution impacts the title to the "County Claims". I will submit a written list of 172 "Disputed Claims" that I am aware exist. There may be more. These issues are:

1. The effect of the Statute of Limitations.
2. The significance of a citizen's possession and the installation of improvements on the property.
3. The consequence of the Counties' refusal to accept taxes tendered.
4. The relevance of the State's legislative intent of using tax sales to return properties to the tax roles.
5. The effect of the County's ownership of these properties as an investment or when not used for a governmental purpose.
6. The consequences of the County's failure to follow the statutes in effect when these properties were sold for back taxes.
7. Who really "owns" these properties today?

1. What is the effect of the Statute of Limitations? It is well settled pursuant to Colorado law that the statute of limitations for challenging title to a tax deed is five years.[3] It is equally well settled that this statute of limitations does not apply against parties in possession.[4] For all cases when a party other than the county is in possession the statute of limitations does not protect the County.

2. What is the significance of a citizen's possession and the installation of improvements on the property? The significance is that it bars the application of the statute of limitations. The standard of possession is, that which is appropriate for similarly situated lands.[5] Many individuals have purchased these claims for good

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[2] See *Welsh* v. *Levy*, 612 P.2d 80 (1980).

[3] Colorado Revised Statutes § 39-12-101.

[4] See *Welch* v. *Levy*, above footnote 2.

[5] See *Concord Corp.* v. *Huff*, 355 P.2d 73 (1960), and *Anderson* v. *Cold Spring Tungsten, Inc.*, 458 P.2d 756 (1969).

and valuable consideration with the not unreasonable belief that the County's title is based on a void tax deed—and taken possession. Others have inherited them from their parents or grandparents who never received the legally required notice of the tax sale. Some have had the property surveyed and had the survey recorded. Many have occupied the property—if even only for a picnic. Most have tried to pay taxes or been informed that such an attempt would be futile. Some have even constructed improvements on their property.

In most cases Pitkin County has only a vague idea exactly where these claims are located. Last summer they posted a few random signs on the back of Aspen Mountain proclaiming ownership. Such conduct and possession prevents the County from prevailing on their claim of title based on the statute of limitations and possession.

3. What is the legal effect of the Counties' refusal to accept taxes when tendered? In 1978 then County Attorney Sandra Stuller wrote a Memorandum instructing the treasurer that no taxes should be accepted on certain claims because they belonged to Pitkin County. She knew of the County's recent loss is the 1970 case of *Board of County Commissioners, Pitkin County* v. *Blanning.*[6] She also knew that many of the tax sales at which these properties were struck off to the County did not conform with the law and were void or voidable. The legal effect of the refusal by the County to accept taxes under such circumstances has yet to be resolved. However, Colorado law suggests that a county treasurer must accept any and all taxes tendered.[7]

4. What is the relevance of the State's legislative intent of using tax sales to return properties to the tax roles? The purpose of permitting the State to sell private property is based on the legislative mandate that taxes are necessary to promote the common good. It would be unfair to government to bear the burden of providing services without all property owners bearing their share—hence the tax sale concept. The legislature, even more than one hundred years age, recognized the need for due process.

The law in Colorado limits what a County may do with properties acquired by Tax Deed. CRS § 39-11-143 provides such powers and limitations:

> "(2) The Board of County Commissioners has the power to rent, lease or sell such property so acquired as provided in this section."

It does not authorize the County to hold land without offering it for sale for over seventy years as Pitkin County has done in many cases.

5. What is the effect of the County's ownership of these properties as an investment or when not used for a governmental purpose? This question is answered by *Farnik* v. *BOCC, Weld County,*[8] which directs that:

> "Promptly upon acquiring real estate not needed for county purposes, steps should be taken to sell the property as provided and required by law. . . . All county owned property not needed for the use of the county should be sold promptly and as soon as lack of need is apparent." (at 475)

In *Farnik* the Court held that Weld County's retention of the mineral/oil and gas rights when they resold the surface was void and concluded that, as a matter of law, the mineral estate must be immediately offered for sale.[9]

6. What are the consequences of the County's failure to follow the statutes in effect when these properties were sold for back taxes? Pitkin has claimed title to numerous mining claims for decades. For example the Alaska Lode was illegally struck off to the County on December 12, 1908. This was done without offering the claim again on December 13, as required by law. Worse, the certificate lists the owner as: "unknown". A modicum of investigation would have disclosed the record owner. Fifty-two years later in March 1960 the County Commissioners requested a Deed to them be issued. Four years later on March 18, 1964 a deed was executed. It is well established in Colorado that the law in effect at the time of the sale governs its validity.[10]

7. Who really "owns" these properties today? In most cases it is not Pitkin County. As a matter of law void tax deeds do not convey title.[11] It has always been a appropriate for the judge or jury to determine the facts of a case and how the law should be applied to them. The Federal Government has no business rewriting Colorado law for Pitkin County to clean up this title mess. It is possible that in many of

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[6] *Board of County Commissioners* v. *Blanning,* 479 P.2d 404 (1970).

[7] See *Miller* v. *First National Bank of Englewood,* 435 P.2d 899 (1968) and, *Concord Corp.* v. *Huff,* footnote 5 above.

[8] *Farnik* v. *Board of County Commissioners, Weld County,* 341 P.2d 467 (1959).

[9] See also *City of Boulder* v. *Stoffle,* 487 P.2d 601 (1971).

[10] *Wigton* v. *Bedinger,* 283 P.2d 645 (1955).

[11] See *Concord Corp.* v. *Huff,* footnote 5 above.

these cases Pitkin County will not be determined to have good title. This certainly would be a reasonable inference from their past litigation and settlement history.

Thank you for the opportunity to speak today. I hope you consider my points carefully and modify this bill to protect the citizens who claim these properties and well as to protect the United States.

Senator WIRTH. Thank you very much, Mr. Wright.

We have a vote on and I am going to have to go over and over and vote and come back, so we will be in recess momentarily. We will then go to Mr. Tim Whitsitt, the Pitkin County attorney, and then to Mr. Dick Gustafson, commissioner in Eagle County, who is accompanied by Mr. Budd Gates and Mr. Jim True, of Eagle County and Pitkin County.

So if that is acceptable, if you will hang on a minute—Mr. Whitsitt, we will include your statement in full in the record and I suspect that you may have comments on Mr. Wright's testimony, and Mr. Wright will want to listen to your comments, so we can get that back and forth for the record.

It has also been suggested to me that the gentleman that I was asking about, Mr. Blanning, is, in fact, here. Is that correct?

Mr. WRIGHT. Yes, sir, he is.

Senator WIRTH. We probably do not have to wait for 7 days for the record. Mr. Blanning, do you want to come up and join us at the table and identify yourself for the record?

Mr. BLANNING. James C. Blanning, Jr., Aspen, Colorado.

Senator WIRTH. Are you the president of the Aspen-Western Corporation?

Mr. BLANNING. Yes, sir, I am.

Senator WIRTH. Who is the president of the Aspen Mining Corporation?

Mr. BLANNING. I am.

Senator WIRTH. And that was one of the Aspen-Western's conveyees, is that correct?

Mr. BLANNING. Yes, and Aspen Mountain properties that have strictly to do with the Aspen Ski Company-held properties——

Senator WIRTH. Who incorporated the New Ophir Mining Company, which is another one of the Aspen-Western conveyees?

Mr. BLANNING. As I remember, it was a person by the name of Dean Young.

Senator WIRTH. When was that done?

Mr. BLANNING. 1978, I think, or 1979.

Senator WIRTH. What is your relationship to that company? Do you have any relationship?

Mr. BLANNING. Right now it is a very complex situation in that the company was dropped as held——

Senator WIRTH. You do have a relationship with the company?

Mr. BLANNING. I have had a relationship——

Senator WIRTH. Who incorporated the Tourtelotte Park Mining Company, which is another Aspen-Western conveyee?

Mr. BLANNING. Yes, that is another one and has strictly to do with Aspen Mountain Ski Area.

Senator WIRTH. Who incorporated that one?

Mr. BLANNING. I cannot say for sure. I believe—I think I was involved with that.

Senator **Wirth**. You do not remember whether or not you incorporated it, but you were involved in it?

Mr. **Blanning**. I think I might have incorporated it, but I would not swear to it.

Senator **Wirth**. Who is the vice president of the Park Tunnel Mining and Milling Company, which is another one of the Aspen-Western conveyees?

Mr. **Blanning**. That also has to do with Aspen Mountain directly. Park Tunnel is——

Senator **Wirth**. Who is the vice president of the company?

Mr. **Blanning**. It depends on which one you are talking about.

Senator **Wirth**. Are you a vice president of that company?

Mr. **Blanning**. No, I do not think so——

Senator **Wirth**. Do you have a relationship with that company?

Mr. **Blanning**. I did have a relationship.

Senator **Wirth**. So you have or had a relationship with all of these companies, and they are all involved in the title that Mr. Wright was here testifying about, is that right?

Mr. **Blanning**. Yes.

Senator **Wirth**. I see. Well, that is good, I am glad to have that all on the record and I will be back shortly. Appreciate it.

And then we will go to you if we can, if we can do that, Mr. Whitsitt.

Senator **Wirth**. If the subcommittee could come back to order. I was told that Congressman Owens—Wayne, welcome. Would you like to come—we have finished all of the committee's activities, except that related to the Pitkin County, Mount Sopris land exchange, which I bet you did not come to talk about. You can if you would like.

Mr. **Owens**. Well, we Members of Congress, as the Chairman knows, can talk about anything, whether we know anything about it or not. If, in fact, you impose that kind of a limitation on what we said in this, we would all be out of business, Mr. Chairman.

Senator **Wirth**. This is the Senate, so you really get into the flow of it.

Mr. **Owens**. That is correct.

STATEMENT OF HON. WAYNE OWENS, U.S. REPRESENTATIVE FROM UTAH

Mr. **Owens**. I appreciate your willingness to deal with Kokapelli National Outdoor Theater. This was an idea which occurred to us last year, when my administrative assistance was visiting in Southeastern Utah and we went to Senator Garn and got his enthusiastic endorsement and the rest of the delegation, and we are delighted to have the chance to visit with you about it today. This is a very worthwhile project, an outdoor performance park in an incredibly beautiful, pristine area close to the City of Moab.

As the author of a major wilderness bill in Utah, as you know, Mr. Chairman, I am sometimes accused of not caring about Southern Utah's economic future, but this kind of a project blends economics, the environment, and aesthetics, and it makes a lot of sense.

Kokapelli, the flute player in mythology, seems a perfect symbol for an outdoor performance park, something distantly akin to the Wolf Trap Farm Performing Park in Virginia. Ours, however, would be less developed, more aesthetically appropriate to the sandstone landscape, and devoted primarily to western and native American arts.

The sand flats area east of Moab is an ideal site for a properly scaled outdoor theater, particularly since it is also the home of Kokapelli Mountain bike trail and the Slick Rock bike trail, both of which could benefit from additional funding and a comprehensive management plan.

Senator Garn and I introduced our bills in Congress to show our support for the national outdoor theater concept and to initiate public debate on the idea and hopefully to get something passed. We are very late in the congressional session. We hope we might still be able to accomplish it. In any case, whether we do or not this year, this hearing will be very helpful in helping frame the issues which need to be resolved.

I understand the Department of the Interior testified earlier today against the Kokapelli National Outdoor Theater, not on the basis of the merits but because of budgetary or administrative constraints. In fact, my understanding is that they agreed that it is an excellent idea.

I should point out that the cost figure of $6 million included in the bill is only a very rough estimate. It could be appropriated on this project in stages and a cost-sharing basis with a private foundation envisioned in the act should we be able to get this bill passed.

Our challenge is to take a good idea and develop it at the appropriate scale. The sand flats are in the right area for this sort of development, but too large a development on the sand flats could eliminate the natural, outdoor ambience which I believe is necessary for the theater's success. These issues can be resolved, I think, quite easily in time, actually, to mark up a bill this year.

We have a rare opportunity to accomplish something here which can be at the same time beautiful, respectful of the pristine area, and economically beneficial to the community. If we do our job well, I believe we will reach a consensus which will afford us the rare privilege of working on a project which will elicit the unified support of the entire Utah congressional delegation, local BLM officials, the University of Utah, the State of Utah, the county and local officials, and the environmental community. And, Mr. Chairman, that is very rare in either of our States, to get that kind of unanimity.

We must be vigilant in our protection of the special qualities of the area which attracted us here in the first place. I believe that the Kokapelli National Indoor Theater, at the appropriate scale, would be a boon to the environment, the economy, and the arts, and an object of great pride for Utah, Moab, the University of Utah, and the future, and a significant addition to the treasures of our public lands and a worthy neighbor to Colorado.

I look forward to what the committee can do about this bill.

[The prepared statement of Mr. Owens follows:]

PREPARED STATEMENT OF HON. WAYNE OWENS, U.S. REPRESENTATIVE FROM UTAH

Last year, when I became aware of the University of Utah's efforts to promote the arts in the community of Moab in southern Utah, it seemed to me that I should try and enlist Federal help for a very worthwhile project, an outdoor performance park. As the author of a major wilderness bill in Utah who is sometimes accused of not caring about southern Utah's economic future, this kind of project which blends economics, the environment, and aesthetics seems ideal. I am grateful to Senator Garn for his consistent support for this project and to this subcommittee for holding this hearing today.

Kokapelli, the flute-player in Hopi mythology, seems a perfect symbol for an outdoor performance park, something distantly akin to the Wolf Trap Farm Performing Park in Virginia, ours will be less developed, more aesthetically appropriate to the sandstone landscape, and devoted primarily to western and native American arts. The sand flats area east of Moab is an ideal site for a properly-scaled outdoor theater—particularly since it is also the home of Kokapelli Mountain bike trail and the Slickrock bike trail, both of which could benefit from additional funding a comprehensive management plan.

Senator Garn and I introduced our bills in Congress to show our support for the national outdoor theater concept and to initiate public debate on the idea. Because we are so late in the congressional session, legislative action on the proposal this year may not be possible. In any case, this hearing will be very helpful in framing the issues which need to be resolved.

I have been informed that the Department of the Interior testified against the Kokapelli national outdoor theater today—not on the basis of the merits, but because of budgetary or administrative constraints. They apparently agree that it is an excellent idea. I should point out that the cost figure of six million dollars included in the bills is only a very rough estimate. Money could be appropriated for this project in stages and on a cost-sharing basis with the private foundation envisioned in the act should the bill be enacted into law.

Our challenge is to take a good idea and develop it at the appropriate scale. The sand flats area is the right area for this sort of development, but too large a development on the sand flats could eliminate the natural outdoor ambience which I believe is necessary for the theater's success. For example, a year-round permanent facility with extensive indoor sitting would likely be inappropriate, while a smaller semi-permanent or permanent stage might be acceptable. The effects of this development on the current users of the sand flats area, especially mountain-bikers, needs to be carefully considered.

We have a rare opportunity to accomplish something here which can be, at the same time, beautiful, respectful of the pristine area, and economically beneficial to the community. If we do our job well, I believe we will reach a consensus which will afford us the rare privilege of working on a project which will elicit the unified support of the entire Utah Congressional delegation, local Bureau of Land management officials, the University of Utah, the State of Utah, county and local officials, and the environmental community. But we must be vigilant in our protection of the special qualities of this area which attracted us here in the first place. I believe the Kokapelli national outdoor theater at the appropriate scale would be a boon to the environment, the economy, and the arts and an object of great pride for Utah, Moab, and the University of Utah in the future—and a significant addition to the treasures of our public lands. I look forward to your comments today and I welcome any questions.

Senator **WIRTH**. Thank you very much, Congressman Owens. I am very familiar with that neck of the woods as well, and was in fact out there for most of the Memorial Day week this last summer. It is very impressive country.

Mr. **OWENS**. I know you were there. You created some real interest, as you always do, and people commented. People cannot ignore you when you visit places.

Senator **WIRTH**. It is the anti-wilderness crowd. We always get them out. They were rolling boulders down on us. No, that is not true.

[Laughter.]

Mr. **OWENS**. When I was down there last year, talking about wilderness, Mr. Chairman, they offered to hang me. What I said in response to that probably protected you this year. I said, it is against Federal law to hang a Congressman, or for that matter a United States Senator, so you are safe.

Senator WIRTH. With some of these people it would have no effect whatsoever. Federal laws do not apply.

At any rate, thank you very much.

Mr. OWENS. We were marking up an amendment, a resolution on the Persian Gulf today in Foreign Affairs, which seemed a little more important at the time than Kokapelli, and so I apologize for being late, and thank you for taking me.

Senator WIRTH. Thank you very much, and we will include your full statement at the appropriate spot in the record as well.

STATEMENT OF DICK GUSTAFSON, EAGLE COUNTY COMMISSIONER, EAGLE, CO

Mr. GUSTAFSON. My name is Dick Gustafson. I have served as an Eagle County Commissioner since 1984. I will go ahead and read my remarks in the interest of time, if you do not mind.

I appear before you today to request passage of S. 2891 so that Eagle and Pitkin Counties can gain ownership of at least 133 acres of the so-called Mount Sopris Tree Nursery property. This legislation is supported by all eight county commissioners from the two counties, from Club 20, which as you know represents 20 western slope counties, numerous other organizations and entities, including Colorado Environmental Coalition, Colorado Counties, Inc., the towns of Aspen and Basalt, the Aspen Ski Corporation, the Aspen Wilderness Workshop, the Wilderness Society, Colorado Association of Commerce & Industry, Colorado Ski Country U.S.A., American Ski Federation, Pitkin County Parks Association, and the Sierra Club.

The 217 acres of Mount Sopris Tree Nursery was acquired by the Forest Service in 1961 and was used to grow seedlings for reforestation efforts. However, due to the decreasing demand for nursery stock in the area, the nursery ceased operation in about 1986, and the land and buildings thereon have since been determined to be surplus to Government needs. They are currently sitting abandoned, awaiting congressional or administrative decision making.

In numerous conversations and meetings with the Forest Service, the counties have attempted to convince the agency that the tree nursery is ideally suited for continued public use—for recreational facilities, for other functions of local government. We have attempted to work out some sort of a long-term lease, or an arrangement for the Forest Service to retain the property and make it available to us.

However, under the current Federal law and policy, the Forest Service must turn the property over to the General Services Administration for sale by auction and the retention of the lands for public use, such as community meetings centers, ball fields, and other recreation uses, is not considered to be part of the Forest Service's mission. So we have been informed that the potential title clouds on some of the lands that we are offering would prevent an exchange being accomplished by administrative action.

Just as a comment: the earlier testimony by the Forest Service indicated that there had been a serious attempt to have administrative action on this; I would have to say that over the past year that has not been very serious at all, at least on the part of the Forest Service.

The bottom line in this case is that 217 acres of the Mount Sopris Tree Farm is one of the few remaining parcels of land in the lower Roaring Fork Valley that is available for acquisition by the counties for public use. This land is ideally suited for use, because it already has buildings and access roads that would serve some functions, such as a senior citizens nutritional center.

It is directly on Highway 82, which is the main road through the valley. It has flat terrain necessary for recreation facilities and fairgrounds, and it is very near the rapid-growing area of the town of Basalt. In addition, it contains a great deal of undeveloped open space which the counties believe should be preserved in its present state, or within some limited recreational development, and there is a photograph up here, indicated in Figure 2, which gives a vision of what that property looks like from Highway 82.

If the counties' budgets were unlimited, perhaps we could afford to acquire these similar lands from the private sector, but the real estate prices in the area have escalated so rapidly that we doubt that we could compete with private developers to obtain a parcel of sufficient size and location to serve our needs. And there simply is not a private site that has all the potential public use attributes, locations, and accessibility to the tree nursery. It is truly a unique piece of property in the valley.

On the Federal side of the equation, the counties are offering the Forest Service in-holdings in some of Colorado's most magnificent and popular wilderness areas, and on Aspen Mountain, not only are many of the in-holdings along heavily used vehicle and hiking trails, but Pitkin County's ongoing struggle over the Conundrum Creek access issue illustrates the wisdom of eliminating national forest in-holdings, particularly those within the wilderness.

If that is not done, many future Conundrum Creek-type problems could arise, with all the attendant costs and legal battles they entail. In short, the counties believe that the Forest Service acquisition of the county's land is strongly in the public interest, and on that particular issue the Forest Service agrees.

In a nutshell, we believe that S. 2891 merely involves a transfer of public assets to a unit of Government most logical to manage that asset in the future. In the case of the tree nursery, jurisdiction of the lands ideally suited for local government uses would be transferred to the counties. On the Federal side, in-holdings in the national forest system would be properly turned over to the Forest Service, which would be best qualified to manage those lands over the long term.

Although the counties believe that S. 2891 is satisfactory as introduced, we are aware that the Forest Service has problems with the current version of the bill primarily relating to equal value and the alleged potential cloud on the title of some of the county-owned lands.

In an effort to resolve this concern, the counties and their representatives have held several recent meetings with the Forest Service, and as a result of those meetings, we have submitted to you a substitute proposal which we hope will satisfy the Forest Service. The key elements of that suggested compromise are as follows:

The counties will agree to continue Forest Service ownership of approximately 65 acres of the riparian land along the Roaring Fork River, which the counties propose to acquire to manage for fisherman access and wetland protection. The Forest Service has the same management plan as the county's, and may exchange this property with the Colorado Division of Wildlife, or some other conservation entity, if that appears appropriate.

The county will guarantee title to the lands that they convey to the Forest Service by agreeing to reimburse the Forest Service in land or money in the event that the title of any of the offered properties proves to be deficient, and the three parcels originally offered by the counties will be deleted from the bill because they are currently in litigation. The Forest Service will be allowed to further exchange some of the lands acquired by the properties if future management plans indicate that this is logical and to the benefit of the public.

Mr. Chairman, with the above recommended changes, we calculate that the value of the lands proposed for this exchange are approximately equal. We believe that should eliminate any remaining concerns about the equal value and further believe that our proposal to guarantee the title should fully address any fears that the United States might end up on the short end of this exchange.

Above all, it is the county's strong conviction that the 133 acres of Mount Sopris Tree Nursery should remain in public ownership by transferring it to the county. Lands are urgently needed by the counties for public purposes. They will be immediately put to use when we acquire them.

In our opinion, it would be a real tragedy for the current limbo status to be continued, or the lands to be sold to a private developer. Therefore, if, upon review of the proposed substitute, the Forest Service is still opposed to the exchange package, we would request that Congress grant us title to the 133 acres in free conveyance.

Thank you very much for the opportunity to testify before you this afternoon. And Commissioner Gates and Commissioner True are both here, as well as myself, to answer questions.

Senator WIRTH. Do either of you have additional comments you would like to make?

Mr. GATES. I am Bud Gates. I am a county commissioner from Eagle County.

Senator, just an example. This is an intergovernmental agreement. We are trying to address a problem before it is after the fact. Let me give you an example. We tried to purchase land in the Edwards area recently to go to a vote of the people. That used to be ranch land, as this tree farm used to be, and I do not know what it sold for, but I suppose approximately $1,500 to $2,000 an acre.

We tried to go to the people recently to buy back 100 acres in the Edwards are, which would cost the people $1 million, and so I give to you that as an example. We are trying to address a problem before it is after the fact. It is an intergovernmental agreement, and I think it is necessary, and I think the county is proud of the steps that we are taking to try to do so.

Senator **Wirth**. Thank you, Mr. Gates.

Mr. True.

Mr. **True**. Senator, my name for the record is Jim True. I am a Pitkin County Commissioner. Although Mr. Whitsitt can address in greater detail the legal aspects of the ownership, I do want to emphasize that Pitkin County believes that we have good title to the property proposed for the exchange, and that Pitkin County wholeheartedly supports the Senate bill, and I am just here to answer any questions that you may have, or the committee may have.

Senator **Wirth**. Thank you.

Mr. Whitsitt.

STATEMENT OF TIMOTHY E. WHITSITT, ASSISTANT PITKIN COUNTY ATTORNEY, ASPEN, CO, ACCOMPANIED BY BOB GATES, EAGLE COUNTY COMMISSIONER; AND JIM TRUE, PITKIN COUNTY COMMISSIONER

Mr. **Whitsitt**. Thank you, Mr. Chairman and members of the committee.

My main purpose here is to address some of the legal issues, if we need to, as to the clouded titles on the Pitkin County claims. We are somewhat disappointed that the Forest Service has made their observation and has objected to the bill on the basis of the clouded title, but I think with an overview on that title situation, and very briefly as we must do this afternoon, it will be easy for the subcommittee to determine that in fact these clouds, if you will, are technical and are minor and should not, in fact, substantially affect the passage of this bill through the Senate.

These claims, and there are about 160 involved in the bill altogether, were private ownership patented lands that were developed in the late 1800's as silver-mining claims for the most part. As you are well aware, when the silver market failed in the late 1800's the town of Aspen very quickly became a near ghost-town, and in fact many of these claims were in fact abandoned by their owners.

They became a burden of ownership and taxes were not paid. Under Colorado statute, these claims were offered for public sale for the payment of taxes, and no parties appeared on offer to sell, including the original owners, the original patentees of these lands.

Most of these tax sales occurred in the first 20 years of the century, between 1900 and 1920, so that is over 80 years ago, and taxes have not been paid on those claims since that time. No one appeared to buy the properties. Under Colorado statute, they were struck off to Pitkin County's name.

After having held the tax certificates on these properties for an additional 30 to 40 years, in the mid-1900's, approximately 1950, again pursuant to Colorado statute, Pitkin County took these mining claims to title, and obtained tax deeds to the properties.

I think it is important to emphasize that Pitkin County is the record title owner on each and every one of the claims that are included in this bill. We maintain that that is still the valid title in this claim, and again, the tax deed is the record deed and record title to the claims, and it is held by Pitkin County.

What we are dealing with in essence, in this, and what this cloud that everyone has talked about is, is essentially good old-fashioned claim jumping on the efforts of one individual, Mr. Blanning, and some of his corporations, to take that record title away from the county and put it in himself with little or no investment, right, or effort.

What has happened is that in the mid-to-late 1970's, well after the taxes had failed to be paid by the original owners, and some 30 years after the county took its own record title, Mr. Blanning, out of the clear blue sky, made a conveyance to himself, essentially, from the Colorado & Denver Investment Company to the Aspen-Western Corporation. Neither of these companies appear previously in the chain of title to the property, and no record or chain of conveyance has ever been obtained by another owner.

From that, they have attempted to spin through several conveyances and create a whole new chain of title. At the same time, there have been some extremely minimal efforts by Mr. Blanning and some of his grantees to "possess the property." There have been minor road cuts from time to time, and cabins built on some of these lands, which are fairly remote to the populated areas of the county.

I will not address in detail all of the legal issues with regard to the title and the clouds on title. The county has obtained an opinion letter from the firm of Arnold & Porter addressing the chain of title and the title of Mr. Blanning and his companies.

By the way, that opinion letter also addresses Mr. Blanning's incorporation. His memory was not all that good, Arnold & Porter, from a review of the Secretary of State's records in Denver, indicate that Mr. Blanning was an incorporator of several of those corporations that Senator Wirth was asking about earlier this afternoon: the Park Tunnel Mining Company, the Tourtelotte Park Mining Company, and also, I believe, the New Ophir Mining Company.

All of those issues are addressed in great detail and I would submit for the record, and it is part of my formal written statement, the letter of opinion by Arnold & Porter as to the wild deeds which were the inception of Mr. Blanning and the problem in title that that creates.

I would, at this point, I think, just make a couple of brief comments on Mr. Wright's earlier statement, which I think was a little bit misleading in some ways. He has indicated to the committee that he has prevailed in litigation against the county. In fact, Mr. Wright has never finally prevailed in quiet title action against the county.

The county has, on occasion, settled with Mr. Wright and his clients in quiet title litigation. In each case, the settlement was based by the county on the very high cost of continued litigation and the fact that the county received back from Mr. Blanning in each instance at least as much property—a quitclaim to at least as much property that he previously clouded as it was giving up to Mr. Blanning. In one instance we received back a quitclaim to three mining claims in exchange for one, which we quitclaim to Mr. Blanning.

Other than that there have been a couple of appellate cases on it, but no final adjudication in favor of Mr. Wright and Mr. Blanning in these cases quieting the title in the favor of Mr. Blanning based on these Denver and Colorado investment company deeds, which appeared from no where in 1979.

In fact, another misstatement that is made deals with those cases. Mr. Wright has stated that people have occupied these claims with the reasonable understanding or belief that the county's tax deeds are void. The appellate court, in one of the cases that Mr. Wright litigated, told him directly that these are not void tax titles, that they are, in fact, on their face, valid tax titles. So I do not believe that there is any way that someone could have had a reasonable belief that the tax titles were void.

I would also submit to the committee that any—in the normal course of business, one purchasing a valuable piece of real estate would take the very standard precaution of obtaining title insurance or a title opinion by an attorney. I do not think there is any evidence that these people have investigated or reviewed their title and had any good-faith sense or belief that they had a valid title, or were receiving a valid title from Aspen-Western Corporation.

And lastly, as to those litigated cases, I think it is important to note that what Mr. Wright and Mr. Blanning have been able to do is avoid an adverse preliminary decision by the courts of Colorado on statutes of limitation. Again, there have been no titles quieted in these cases. They have successfully avoided having the title quieted preliminarily to the county. At that point, when protracted litigation appeared imminent for both sides, they both have decided to settle the case.

This is a bill and an exchange that is extremely important and in the interest of the county. We would urge the subcommittee to give this close consideration.

I would ask the Chairman—he indicated that it may be possible to engage in some colloquy among the panel members at this time. I have a couple of questions that I would pose to either Mr. Wright or Mr. Blanning as to their title.

[The prepared statement of Mr. Whitsitt follows:]

PREPARED STATEMENT OF TIMOTHY E. WHITSITT, ASSISTANT PITKIN COUNTY ATTORNEY, ASPEN, CO

Mr. Chairman and Members of the Subcommittee,

My name is Tim Whitsitt and I am counsel for Pitkin County, Colorado, which includes the Towns of Aspen and Snowmass. As almost everyone is aware, tourism (and especially skiing) has made our county one of the most sought after locations in the nation. Real estate prices have escalated accordingly and reasonably priced land for public uses is extremely scarce. This situation is exacerbated by the fact that 75% of our county is Federally owned and therefore unavailable for local government facilities and functions. Not only has this phenomenon resulted in the shortage of land for affordable housing and forced many who work in the ski areas to commute from considerable distances, but it has also made the cost of setting aside land for public recreational and other facilities almost prohibitive. In short, it is extremely difficult for our local governments to compete in the open market to acquire land to devote to public purposes. Hence our request to Congress to make portions of the Mt. Sopris Tree Nursery "surplus" property available for future public use rather than placing it on the auction block through the General Services Administration.

As you know, we are proposing to do this through a land exchange. In addition, we have agreed, and the legislation provides, that any land we acquire must always be used for public purposes, and if it is not, it will revert to the United States or the proceeds of any sale, lease or other arrangement will accrue entirely to Uncle Sam. We, therefore, believe this proposed exchange fully protects the public interest, and enhances it by giving the Forest Service extremely valuable and important National Forest and wilderness inholdings.

To the best of our knowledge there is only one potential stumbling block to our proposal, and my primary purpose today is to assure you that it is a minor matter which should not stand in the way of excellent legislation. I am, of course, referring to the alleged cloud of title involving approximately 122 of the 165 county-owned patented mining claim properties which would be acquired by the United States under the legislation. Before stating the reasons why I believe any cloud on title is remote at best, allow me to briefly elaborate first upon my own background, and upon on the factual pattern involved with these properties:

Prior to taking my current position as an attorney for Pitkin county, I was engaged in the private practice of law in Denver, Colorado for over 12 years, first as an associate and then partner in the firm of Shaw, Spangler & Roth. In that practice my primary areas of concentration were in litigation and mineral land title examination, where I reviewed titles for hundreds of drilling and producing oil properties throughout the Rocky Mountain region for numerous clients, including Presidio Oil Company; McAdams, Roux & O'Conner; KN Energy, Noarko Resources, The Anschutz Corporation; and Tiger Oil Company.

As the Committee may be aware, most of the 160 properties in question were acquired by Pitkin county from the former landowners in the early part of this century for non-payment of taxes. Between approximately 1949-1954 the Pitkin County Treasurer issued formal Treasurers Deeds to the lands to the county. Some 25-30 years later an individual from Aspen, sometimes working under his own name and sometimes under the name of several corporations he created, purported to deed title to 122 of the properties to himself or various entities with which he is affiliated.

Although in certain cases attempts appear to have been made to give the impression that a chain of title in the lands existed, the single fact pattern that appears to emerge from almost all the cases is that the individual or corporation purporting to convey the lands had no chain of title whatsoever in the lands conveyed. Thus the "deeds" which purport to convey title are completely "wild" and the attempts to convey the County-owned lands are completely bogus . . . because it is an established principle of law that a person who has never acquired title to property cannot validly convey that property. At this point I would like to submit for the record an independent legal memorandum from the well-known law firm, Arnold & Porter, confirming this assertion.

An analogy might be made here to my going to the Boulder County courthouse and filing a quitclaim deed stating that I own Senator Wirth's house. In doing so, I have created a "cloud" on his title, but I have no legal or factual basis for doing so . . . and yet a title abstract will show my "claim" to the land as a potential encumbrance on title. That is basically what happened to our county with respect to our lands. In addition, by using the names of old defunct corporations which appeared in the chain of title earlier in the century, in several cases the illusion of a more serious cloud on title has been created . . . but we firmly believe it is just that . . . an illusion and nothing more.

In addition to the "wild deed" issue, several other legal principles make it virtually impossible that our title can be successfully challenged:

1. As the Counties took over these lands some 30-70 years prior to the adverse wild deeds being recorded, any complaints relating to improper procedures used by the Counties have long since been voided by the statute of limitations. Further, there does not appear to be standing for someone who has no chain of title from previous owners to complain about how such lands were taken over for delinquent taxes.

2. The Colorado Supreme Court has ruled that title acquired by tax deed is not subject to attack after it has been of record for seven years. How, then can "wild deeds" filed in the 1970s adversely affect Treasurers deeds issued to the Counties 25-30 years earlier?

3. Although arguments have been made that a cloud on title might somehow exist by virtue of the doctrine of "adverse possession" of a limited number of the county-owned properties, adverse possession requires "good faith" by the claimant. It is exceedingly difficult in this modern day and age to see how "good faith" can be established when to our knowledge none of the adverse claimants have secured title insurance for their deeds. In addition, the county's title is clearly shown in all record books with no deeded successors in interest and the County passed a formal Resolution in 1976 declaring its intention to keep the land as open space as is permitted by State law. Further, the few attempts to show possession of the land such as activities involving road clearing and site

> marking on a few claims were red tagged by the County in 1988. We inspected the red-tagged properties just last week and are aware of no further attempts at "possessory" activities undertaken on these properties since we cited the would-be occupants for violations.

Finally, Mr. Chairman, it should be noted that the legislation before you would not take away any rights which adverse claimants might have against the United States after it acquires title from the Counties. Adverse claimants, even though we believe their claims are completely frivolous, would maintain unaffected their legal right to challenge the Forest Service's title, and in the highly unlikely event that they win in a case or two, the Counties will propose an amendment to S. 2891 that would reimburse the Forest Service for the value of any and all title found deficient. In short, we are so confident of the soundness of our title that we are willing to guarantee it by agreeing to reconvey an equal portion of the Mt. Sopris Tree Nursery or other county owned land to the Forest Service if the courts ever find title wanting.

We also believe it is strongly in the public interest that the county-owned lands come into the Federal public domain because the preponderance of the lands comprise inholdings in wilderness or other highly scenic National Forest locations. Management of these areas is a Federal priority which is frustrated by fragmented ownership. We thus do not feel it is unfair to require any adverse claimant to go to Federal court to assert any claim as provided in section 5(b) of the legislation, and believe that relief is, if anything, overly generous to claims which we think are frivolous, and perhaps in some cases fraudulent.

Pitkin County's final request on this legislation is that if the land exchange as proposed is determined for some reason to be infeasible, the legislation be amended to at least convey the 133 acres of the Mt. Sopris Tree Nursery to the counties free of cost this year. The land and buildings thereon are urgently needed for a senior center/meeting place, recycling facility and recreational purposes, and it would be most unfortunate to have this matter delayed until 1991.

Thank you for the opportunity to testify. I would be happy to answer any questions that the Subcommittee might have.

Senator WIRTH. Thank you very much, Mr. Whitsitt.

At this point I would like to introduce into the record letters of support for the Mt. Sopris exchange from Club 20, Colorado Ski Country, Colorado Counties, Inc., the American Ski Federation, the Aspen Wilderness Workshop, Colorado Environmental Coalition, Pitkin County Parks Association, and the Colorado Association of Commerce and Industry. Those will be included in the record.*

And I think you refer to most of those, Mr. Commissioner, in your opening remarks.

Let me, if I might do this, ask Mr. Wright if you have any reaction to the statements that were made by Mr. Whitsitt?

Mr. WRIGHT. Yes, sir, I do. I hope it is clear the only issue of the bill that I am addressing is the issue of Pitkin County's title to the property. I think fundamentally my issue and my argument is that the issue and the resolution of that issue should be left to the county in State court.

While it is true that the county has proposed to guarantee the title, this guarantee still requires that Uncle Sam pay to litigate this title. They are not going to do that.

Another issue that I think is very important is the issue of the county's duty to return the property to the tax rolls, not necessarily last year, but in the 1930's, 1940's, 1950's, and 1960's.

The other point I want to make is that one of——

Senator WIRTH. Let me ask you, if I might on that first point, Mr. Wright, if Mr. Blanning—and Mr. Blanning, I am sure you can speak for yourself—if Mr. Blanning believed that the county's title was invalid, which is the point that you are making, is that correct?

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* See Appendix.

Mr. **Wright**. Yes.

Senator **Wirth**. If you believed the county's title was invalid, why did you not challenge that title before? Why did you not challenge that title in court?

Mr. **Wright**. As long as I have been involved in these cases, sir, which has been about a decade, the expense has been the general deterrent from challenging those titles. And the cases that I have been involved in, I have represented defendants, with Mr. Whitsitt and his predecessors as the plaintiffs in the cases that they chose.

I would also like to make it clear for the record that I have been involved in several, at least four or five, different disputed claims with the county. In only one of those was Mr. Blanning my client. I have represented Mark Van Alstine, Steven Coolidge, Wyrick Deane, and D. Stone Davis, among others in these cases. I hope that I am characterizing this as an issue that involves a lot of people besides just Mr. Blanning.

Senator **Wirth**. If Mr. Blanning believed that these were invalid, what standing did Mr. Blanning have to challenge these?

Mr. **Wright**. He was challenging them as a named defendant and a party in possession of the property. The litigation in the cases I have been involved with was filed by Pitkin County as the plaintiff.

Senator **Wirth**. If you were concerned about challenging whether or not Pitkin County owns the land, which is the basic issue here, what standing did Mr. Blanning have to challenge that?

Mr. **Wright**. In the cases and on the claims, that he is an owner of record. That gives him standing in our State court system to file what we call Rule 105 Quiet Title Action and ask that the title be adjudicated in him.

Senator **Wirth**. What is your response to that?

Mr. **Whitsitt**. My response to the first question would be that I believe Mr. Blanning has been attempting to get something for nothing, which is why he has been unwilling to expend the funds that would be necessary if he truly felt the county had bad titles and his was good.

I would suggest that the first thing that he would do is to take those valuable titles to court and settle them all. But because he is attempting to get something for nothing, he has only reacted. When the county has discovered activities on certain claims, we have filed lawsuits. Otherwise, we have rested assured that we had a valid title.

Senator **Wirth**. Why did you not do that, Mr. Blanning? If you did not think that the county owned this land, why did you not take the titles to the county and say, you do not own this land?

Mr. **Blanning**. It is the same situation with the county. The county has held those titles since 1950. And they have, under Colorado law, every right to file a quiet title, too. It involves litigation and litigation is expensive on both sides. The people that I have sold to, and myself, have had the peaceful use of the property up until this date. The county tried to give this whole group of properties—excuse me, the county——

Senator WIRTH. If I could interject here. Now, Mr. Blanning is claiming that he has just as much right to those properties as the county does. That is the first point that he is making. You have only had the title since 1950, and he has just as much right as you do to come in and claim the land. What is wrong with that?

Mr. WHITSITT. Mr. Blanning certainly has the right to contest. And, in fact, we have named Mr. Blanning because of the wild deed situation. There is no question that he has put a cloud on our title. I suppose it is not illegal, so to speak, for him to do that. But it does not give him a right to the title or a right to possess.

Senator WIRTH. What gives you the right to possess?

Mr. WHITSITT. The tax deeds that have been on of record since 1950. And until and unless Mr. Blanning or someone else can demonstrate that those tax deeds are invalid, the record title is in Pitkin County. And, in fact——

Senator WIRTH. What is your answer to that, Mr. Wright?

Mr. WRIGHT. My answer to that is that I think as we sit here today we have no clear direction from our State courts that tell us that Mr. Blanning's title is any better or any worse than Pitkin County's. And I do not think we have any direction to the contrary. That is the fundamental basis of my argument, is that these are important, significant legal issues that need to be ascertained.

If the bill in its present form is passed, then the Federal Government is going to bear the burden of establishing how good or how poor the respective parties' titles are.

Mr. BLANNING. I might add, I did go all the way to the Supreme Court personally on a piece of property that is now worth on the order of $15 million or $20 million in Aspen. And I did prevail as against the county on the tax deed. And this is where all the instigation—a guy by the name of Chuck Stoddard was the attorney, from Glenwood Spring, and we took this all the way up through the court of appeals and prevailed. And this was the basis of establishing the validity of the county tax deeds from which I operated in creating these so-called clouds on the titles.

Mr. WRIGHT. That happened, I believe, in the late 1960's, early 1970's, from the inception of that case to the Supreme Court decision.

Mr. WHITSITT. I would interject. And we are getting into a lot of the legal issues.

I would say first of all, we are not going to be able to settle all of the clouds on title that have been created here, this afternoon. And maybe a Senate subcommittee is not the appropriate place to have those settled. That is what the courts are for.

I would remind the committee that the bill itself does not change or affect Mr. Blanning's right to settle or quiet his title if he has good title. And it does not detract from those efforts. Now, in fact, Mr. Blanning has prevailed in one case. That was a case in which it is clear from the court opinion that he did have a conveyance from someone in the chain of title, from the earlier patentee, which is an entirely different situation.

Again, if the letter of Arnold & Porter is reviewed, it is clear that the title to the claims that are involved in this exchange is a purely wild title that essentially came out of the blue in 1979 from an entity that was not, at any point in time, in the chain of title.

Record title cannot be created through a wild deed. The example I gave in my formal statement was were I to go into the Boulder County Recorder and file a deed on Senator Wirth's house, I would have much the same cloud on title as Mr. Blanning has now on the titles in Pitkin County. It might render that title to your house unmerchantable. It would not give me record title.

Senator WIRTH. First question we want to make sure that we get answered from you on this situation is your belief as to who owns this piece of land. It seems to me that that is just a fundamental item. The county claims that it, under all of the items outlined by the Commissioner and outlined by counsel, the county claims that they have this because of tax deeds since 1950 and that was a perfectly valid way in which you gained ownership of the land. Is that a fair summary of this?

Mr. WHITSITT. Yes it is, Senator.

Senator WIRTH. And you claim that is not the case. Is that right?

Mr. WRIGHT. I am a little uncomfortable with the generality. I believe we are talking about 122 claims. And it is my opinion—I need to make it very clear, I have only carefully looked at the title and exactly what has happened in less than a dozen of those claims.

But, for example, in one of the previous claims that was litigated, that went to the court of appeals, my client did have a direct connection with the owner that was the record owner at the time of the tax sale.

These are all different. The irregularities with the tax sales were different from year to year. And it is very difficult, I think, to accurately generalize.

Senator WIRTH. We are leaving the record open. Why do you not let the committee know what differences you might have with that, the statement made by Mr. Whitsitt about how the county has possession of this land? That is issue number one that the subcommittee has to deal with.

The second one is if Mr. Blanning did not agree with this, why did he not do something about it.

As I read S. 2891, it does not take away any rights that Mr. Blanning might have to go to court. Contrary to what I think your testimony suggested, that there was a violation of due process and a shift of the burden of proof, it is committee counsel's understanding that under Colorado law, given that the county has treasurer's deeds to this land, the burden of proof would be on someone challenging those treasurer's deeds to get them declared illegal. Also, under Colorado law, someone claiming adverse possession has the burden of proving such possession.

So you might answer those two questions for the record as well, if you would do that. Would you, Mr. Wright?

So, one, who owns it? Why does the county not own it? Second, if you did not think they owned it, why did you not do something about it? And you still have the right in the legislation to clear that up. It seems to me that those questions ought to be answered for the record.

And you are quite right, we are not going to debate that back and forth here. But I think having that on the record would be very important.

Third, on page 5 of your statement, Mr. Wright, you stated that many of your clients purchase properties in the belief that the county's tax deeds were void and then "occupied" those lands by taking picnics on them. As I understand it, the county got its treasurer's deeds in the early 1950's.

And since then—if this is correct, Mr. Whitsitt, you might correct the record—the county issued mineral leases on many them, held them under a 1955 Colorado law which allows counties to hold land for open space, passed a resolution in 1976 stating the county's ongoing intention to hold the lands as open space, had the titles reviewed and secured title reports and status of title, and posted many of the lands as Pitkin County open space. Is that accurate?

Mr. **Whitsitt**. Yes, that is generally accurate as to the status and as to the actions the county has taken to possess.

Senator **Wirth**. In response, by having occupied the lands, you have taken a whole variety of actions in the county since 1950.

Mr. **Whitsitt**. We believe we have in accordance with their purpose, which is as open space land.

Senator **Wirth**. What standing does that have, Mr. Blanning or Mr. Wright?

Mr. **Wright**. I call to your attention that that does not explain a 40- to 50-year period where the county, from the date the county struck those properties off the tax rolls as for failure to pay taxes, arguably without proper notice and arguably with other problems with their tax sales, and waited 30, 40, or 50 years to do anything with those properties. That creates—for me that is a problem. That may not be a problem for the committee.

Senator **Wirth**. What does that have to do with this? I mean, the county says that under Colorado law these things were unpaid, they picked this up, they think under Colorado law goes to the first question. What does that 40- or 50-year period have to do with it?

Mr. **Wright**. That 40- or 50-year period violates the laws during those days that did not recognize the concept of open space and that required those properties to be returned to the tax rolls so that they could help support the public welfare.

Senator **Wirth**. And what is your response to that?

Mr. **Whitsitt**. I guess I would ask where Mr. Blanning was when all this illegality was happening. He has come in 30 years subsequent to that holding period, after it is clearly acceptable in the State for the county to do what it has done. Mr. Blanning's first interest in these claims appears to be 1979. I do not believe that Mr. Blanning has any standing to object.

Mr. **Wright**. I think that evades the question of the county's duties to return that to the tax rolls.

Mr. **Blanning**. There are no listings that they make reference to when they said they went and under 1955 law created this open space; they did it blanket. There was just a—we, all claims, said, in the minutes, we want this all open space. As I understand it under the law, if they are going to claim something, it has to be claimed, specifically listed. It goes back to this bill which says, on the map, these claims—on a map, that is the only reference. Consequently, they have a list of claims they claim, but they cannot seem to produce this list.

Senator WIRTH. What right do you have to come in and claim these, Mr. Blanning?

Mr. BLANNING. I have—there is a sad mistake that took place with Federal Express. It was delivered in Aspen at 4:30 last night. It was supposed to be here at 10:00 a.m. this morning, and it did not make the plane.

Senator WIRTH. Let me ask you again, what right do you have that after all this period of time, to come in and say that you own this land?

Mr. BLANNING. Basically, it is a possessory right as against the county's void deed.

Senator WIRTH. The fact that your people had picnics on them gives you possession, rather than what the county has done over a 30-year period of time?

Mr. BLANNING. Well, right. The only think the county has really done is, in 1981 they tried to give these claims to the Forest Service—give them, outright donate them——

Senator WIRTH. I just want to know what your right is.

Mr. BLANNING. And the deeds are recorded.

Senator WIRTH. Let me ask you the question—you might want to further expound on that for the record, Mr. Wright.

On the last page of your testimony—let me go back to the issue that you talked about as well, Mr. Wright, on why the Federal Government should take on the county's duty to establish title in this case.

Is the answer to that—and let me ask you, Mr. Whitsitt, about this—that all of these lands are in-holdings in the White River National Forest? They all are, are they not?

Mr. WHITSITT. That is absolutely correct.

Senator WIRTH. About half of them are in wilderness areas, and I think we have got what the land is, and we will make sure that that is in the record.

If these lands are proposed for development, it is the Forest Service that will have to address the issues of appropriate access, road construction, road use, cabin construction and the like, and the surrounding Forest Service lands and wilderness areas, which will feel the adverse impacts of the development.

So therefore, the Forest Service is going to have that legal responsibility anyway, is it not?

Mr. WHITSITT. They will certainly be very deeply involved in development issues surrounding these claims if and when they are——

Senator WIRTH. If I understand Mr. Wright's point, it is that the taxpayers and the Forest Service should not be burdened with this responsibility, that that is not an appropriate thing to do. Is the answer to that well, they have got it anyway? I do not know. It seems to me the Forest Service is going to have that anyway. You know, the Forest Service is deeply involved, is it not?

Mr. WHITSITT. Yes, it is deeply involved. It is the county's position that being in-holdings in the forest, and being somewhat scattered, it is virtually impossible for the county to manage and administer these kinds of lands.

Senator WIRTH. Does the Forest Service not have to do that anyway?

Mr. WRIGHT. I am not sure whether they have to do it anyway, but my experience in Pitkin County is, any time there is any building or any development of any nature, it is Pitkin County's position that notwithstanding the location on Federal lands, notwithstanding any other issue, they have the right to regulate any and all development of any sort.

It is, unfortunately, another issue that has never been finally resolved in the courts. We have always been fortunate enough to make an agreement. But I can tell you as a fact, if I wanted to build a cabin on a claim in the White River National Forest, notwithstanding whatever I had to go through with the Forest Service, I would have to get a building permit and I would have to go through 1041 review, and I would have to go through general submission, and I would have to spend thousands of dollars to get Pitkin County approval under their land-use code.

Mr. TRUE. Senator, if I could interject another point on the question of the Forest Service connection, you know, with development that is being proposed with in-holdings in the Forest Service, there is substantial pressure on local and Federal Governments to acquire that property, and again, it is an issue on which the Federal Government would become involved.

Considering the development granted, the county and the Federal Government may be involved in considering the issues that Mr. Wright just spoke of. The fact is, the Federal Government is deeply involved in these issues, in protecting the forest and the White River National Forest and the wilderness areas.

Mr. WRIGHT. I do not disagree that they are deeply involved. I would disagree that they are exclusively involved.

Senator WIRTH. It seems to me that if, in fact, Mr. Blanning or whoever is involved in this, or whichever one of the corporations is involved in this, believes that they are being wronged if this legislation were to pass. They have the perfect right to go to court to resolve that issue.

It seems to me, as I see it, that there has been a long period of time—did you not try to do something with all of these in 1979? You have had control of these for a long time, have you not, Mr. Blanning?

Mr. BLANNING. No, sir. This goes back to, like I said, the creation of the tax deeds and coming to the conclusion that they were invalid. Technically, under the law, those tax deeds—we tried to go in and get them to put these tax deeds up for auction pursuant to Colorado statute. They refused to do it. It was a choice of going into court and forcing them to do it—and that that can be done at this very moment. I can go into court tomorrow and challenge the county in court to justify the open space based solely on the fact that they never listed what they have.

Senator WIRTH. But you have had a problem on this presumably for a long time. As I understand it, in 1979, you attempted to deed yourself title to the 122 properties owned by the county, is that not right?

Mr. BLANNING. No. These are corporations. Corporations are individuals. Most of these corporation things involve—they involve strictly—the Tourtelotte Park is part of the Aspen Mountain Ski Area. The Aspen——

Senator WIRTH. All these corporations were acting independently? But in any case, you have known since 1979 that these titles, or your claim to them, or the corporations' claim to them, may be a problem, but you have never challenged those, is that correct?

Mr. BLANNING. That is true.

Senator WIRTH. Why have you not done that? Common sense would tell me if I had 122 pieces of property and I thought somebody else was unfairly trying to take possession of that, I would challenge that unfairness.

Mr. BLANNING. Nobody has unfairly tried to take possession. The pieces we are talking about in Tourtelotte Park were bought for quite a consideration by the Aspen Skiing Company.

Senator WIRTH. I am talking about these 122 pieces of property that are at issue here. If I had 122 pieces of property and I felt that the county was trying to take those piece of property away from me, I would say, hey, wait a minute, that is not fair, and if this has been going on now for a decade, where have you been all this time?

Mr. BLANNING. Surviving. Trying to survive, basically.

Senator WIRTH. One of the parts of survival is to make sure that somebody does not take away your pieces of property.

I want to ask Mr. Blanning—I mean, you have only been around for a short period of time. Where was Mr. Blanning in all of this? Is that not a very logical and simple question?

Mr. BLANNING. Number 1, there are a large group of these that do have title, that Denver and Colorado Investment Company does have a title that goes back to 1920. That is on a certain percentage of them, say 30 or 40. I cannot say exactly, at the moment, which ones they are.

Senator WIRTH. What happened to that title? You would argue that that got lost because taxes had not been paid?

Mr. WHITSITT. Based on the title reports and opinions, they never appear in the chain of title. I would dispute that they had any record title at all.

Senator WIRTH. You might want to give that for the record, Mr. Wright, to see if—they are saying they had title. Did they have title?

Okay, having dismissed that, why, Mr. Blanning did you not do something about this for the last decade?

Mr. BLANNING. In some of these claims, in some of these areas there was a consideration to my friends that they pay me $1,000 for the title to the claim, and they wanted a place—they were little people. They were my friends. They did not have a bunch of money——

Senator WIRTH. Friends of yours, and you sold them titles that you did not own for $1,000 apiece?

Mr. BLANNING. To me, I did own them. I had title in—to me, into Aspen-Western Corporation. There was title between Denver & Colorado Investment to Aspen-Western, which sold them. The Colorado law goes into reincorporations and such and it is a very complex thing.

Senator WIRTH. So one of the reasons is that because—what was this? The Colorado & Denver Investment had sold it to Aspen-Western, and that made it more legitimate?

Mr. BLANNING. Yes.

Senator **Wirth**. But you are the same person. You are Colorado & Denver Investment, and you are Aspen-Western. You are all these same things?

Mr. **Blanning**. That is——

Senator **Wirth**. You said, in fact, these were all companies that you were either president of or involved with, is that not the case? You are creating this chain. This is Blanning to Blanning to Blanning, which is easier to repeat than Tinkers to Evers chance.

Mr. **Blanning**. To me there is a trade-off. You can say, exactly right, I created title. You can say by the same token that the county created titles with their tax deeds.

Senator **Wirth**. Wait a minute. We have already said the first question we are going to address is whether or not the county can do this. I am just asking you the common sense question, if I, or any person listening to this said that they had 122 pieces of property that they felt the county was taking away from them, and this had been going on for a decade and you did not do anything about it, we would say, wait a minute. This does not ring true.

Mr. **Blanning**. I do not have 122. In 1979 these were sold off by new corporations to 65 or 70 different people.

Senator **Wirth**. It is all the same thing, Mr. Blanning. Mr. Gustafson—I mean, you might want to answer for the record why, over more than a decade of time, and you felt you were being wronged over this time, you did not do anything about it. Would you not say, just common sense, if you had 122 pieces of property, and somebody were trying to take those away from you, would you not do something about it?

Mr. **Blanning**. Nobody is trying to take it away from me.

Mr. **Gates**. It seems like to me, Senator, I have a clear title and I have proved I have a clear title. I am out there every day defending that clear title.

Mr. **Gustafson**. Mr. Chairman, I think it would be a little bit like anybody who walked into a county courthouse or had a picnic on a county park, would then claim that they owned the park because they walked into it. It has reached the point of almost being ridiculous.

Senator **Wirth**. Why do you not answer this for the record, Mr. Blanning? Why, if, in fact, as I understand it, in 1979 you attempted to deed yourself title to 122 separate properties? That did not happen, and you felt you owned them, and you did not do anything about it since then but set up a whole variety of corporations to pass them down, as I understand it, to try to then demonstrate that you had title?

Mr. **Blanning**. There were two corporations and it went out to many different individuals, and in many cases—in some cases they do have valid title from the original owners, and the tax deed has been proven void. It can be voidable for any number of different things. it is a great volume of law against tax deeds in the State of Colorado, and I am not here to say that I have absolute——

Senator **Wirth**. That goes back to the original question Mr. Wright is going to address for the record. I think that was the first question as to, what is this process and how valid is it for gaining possession?

The question I am asking you is that if this has been going on for all this period of time, where have you been for the last 11 years, much less for a longer period than that. It seems to me common sense would suggest that you ought to be able to answer that question.

Mr. Wright. May I respond to that briefly?

Senator Wirth. Sure.

Mr. Wright. There are two fundamental answers to that. One is, attorneys and litigation are expensive, and number two, in the last decade, in the cases I have been involved in, whenever the issue did come up with the county, a deal was struck and the claimant ended up owning a portion of the property.

I would certainly agree with Mr. Whitsitt's earlier statement that none of these matters, not one, was ever litigated to fruition. Every single one was resolved by settlement, and every single one that I was involved in ended up with my client owning a piece of that property.

Mr. True. Senator, may I inject a summary for what seems to be some crucial points here? The proposal of the Senate bill indicates that should an individual prevail, then the county would reimburse—in essence, reimburse the Forest Service for what the individual prevailed on.

Mr. Blanning has indicated, I think correctly, that there may be a couple of claims involved in these 122 which may have clear chain of title, and an individual may prevail. The simple fact is that this bill does not in any way, shape or form take away the rights of those individuals to pursue their interests.

The simple fact also exists that Mr. Blanning has created some titles out of the air, so to speak, or has created corporations in the late 1970's that may have had the same name of a corporation in the early 1900's that owned property.

But the simple fact is, if there is a valid ownership, then the bill provides for legal remedies through the Federal courts which an individual may pursue, and we are in no way, shape or form trying to interfere with anybody's due process, and we will reimburse the Forest Service if that individual does prevail, and those seem to be the crucial facts that the committee must consider in pursuing the bill.

Mr. Gustafson. I would like to add one additional thing, too. It is very clear, because of the cost of litigation, that Mr. Blanning has been successful in blackmailing the counties in this particular process by taking four and keeping one, so that he ends up with one particular piece of property, and he is terrified of having to do this with the U.S. Government because it is not going to be blackmailed.

So that is the only reason he is protesting the bill, because this bill does not have any effect whatsoever on his claim to titles to any of these properties. It just changes the owner.

Mr. Blanning. I do not care whether it goes to the Federal Government or not, personally. I have a lawyer that says that he would rather fight you in Federal court. I personally do not think that the other 70 people that are involved should have to try to fight in Federal court in Denver as against the district court in the area where the properties are located.

Senator **Wirth**. By the way, these other 70 people that are involved in this, did you tell them when you sold them the land or gave them the land that there was a potential title problem to that?

Mr. **Blanning**. Yes, sir, I did.

Senator **Wirth**. They were all informed about that?

Mr. **Blanning**. Yes.

Senator **Wirth**. So they are perfectly prepared? This does not come as a question to them?

Mr. **Blanning**. I do not know that they are prepared for Federal court. They are prepared for——

Senator **Wirth**. But you told them that there was a problem with this, that they were not getting something that was absolutely clear?

Mr. **Blanning**. Absolutely.

Senator **Wirth**. That is important. I want to make sure that if there are some innocent people out there, that they were certainly going into this with their eyes open.

Mr. **Whitsitt**. Senator, let me suggest that none of these grantees have exactly been beating down the doors of either the State or Federal court. As Mr. Wright has admitted, it has been all Pitkin County's initiative to bring the quiet titles.

Senator **Wirth**. Is there anything else that you all would like to include in the record at this point?

Mr. **Wright**. No, except that I will respond to your questions.

Senator **Wirth**. I think you probably will not have a chance to look again ~~at M~~r. Whitsitt's testimony, and Mr. Whitsitt would like to look back at Mr. Wright's testimony, and I would think that maybe you all might want to react and respond to that, and we will certainly leave the record open for that. I think we want to have a thorough airing of this issue.

Mr. **Wright**. Is it procedurally possible to leave the record open until a week from Monday?

[Subsequent to the hearing Mr. Wright submitted the following:]

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WILLIAM F. VIPOND, JR.**

* ALSO ADMITTED TO TEXAS AND LOUISIANA BAR
** ONLY ADMITTED TO CALIFORNIA BAR

TELEPHONE 303-925-5625
FACSIMILE 303-925-5663

2 October 1990

Honorable Timothy E. Wirth
Vice Chairman Subcommittee on Public Lands,
National Parks & Forests
Senate Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Re: Mt. Sopris Tree Nursery Act of 1990 - S-2891

Dear Senator Wirth:

I am writing in reply to the questions you asked me at the hearings concerning the above legislation. I request that the enclosed be made part of the record of the hearing of the Subcommittee on that Act.

You asked for information about several corporations:

1. The Denver and Colorado Investment Company. On 15 October 1907, Nellie Mitchell by G.J. O'Donnell, her attorney-in-fact, deeded a large block of mining claims to The Denver and Colorado Investment Company, a Colorado corporation. A search of the State Archives for the Articles of Incorporation found no record of that corporation. (copy of search results attached - Exhibit 1). This may be due to a difference in the structure of the law, in that the requirement in 1907 may have been to register with the county clerk's office. A search of the Archives should show the Denver and Colorado Investment Company was incorporated in 1979 by Dean D. Young et al. Mr. James C. Blanning did not have any interest in either of these corporations.

2. The Aspen-Western Corporation. This corporation was incorporated on 7 July 1970 by James C. Blanning, Jr. He is today the president of this company.

3. Aspen-Western Mining, Ltd. dba Aspen Western Mining Corporation. On 18 March 1988 Blanning incorporated this corporation. He is today the president of this company.

4. The New Ophir Mining Company. The original Articles of Incorporation were filed in July 1913, by D.R.C. Brown, G.A. Wells and L.A.W. Brown (Articles of Incorporation attached - Exhibit 2). Second Articles of Incorporation were filed in July 1975, by James Wingers, Michael Pokress and Andre Ulrych (Articles of Incorporation and Certificate of Incorporation attached - Exhibit 3). A third incorporation was filed by Blanning 14 August 1987.

5. The Tourtellotte and Park Mining Company. A certificate of amendment to Tourtellotce and Park Mining Company, formerly known as Keno Mining Company, dated 11 May 1979, is attached - Exhibit 4. A second incorporation was filed 22 July 1988.

6. The Park Tunnel Mining and Milling Company. The original articles of incorporation were filed in July 1917, by Robert Shaw, W.R. Foutz and F.M. Yates (Articles attached- Exhibit 5). Second Articles of Incorporation were filed in July 1976 by Blanning, Joan Klar Blanning and Virginia W. Blanning (copy attached - Exhibit 6). A third incorporation was filed 24 June 1988 by Brenda Benz.

Be aware that pursuant to CRS §7-8-113(6) and (7), a corporation which was suspended for the preceding three years shall be dissolved. Any corporation declared defunct on July 1, 1978, but not dissolved was also deemed to be suspended and dissolved. No corporation was dissolved prior to January 1, 1981, or until five years after it became defunct, whichever was earlier. Upon dissolution of a corporation by the Secretary of State, all records of such corporations are transferred to State Archives.

You asked who has possession of the claims? You asked the basis for the my clients possession and who has better possession my clients or Pitkin County? There is case law that indicates that possession must be evaluated based on the uses made for similarly situated property. In this case for most claims the County does not even know their specific locations nor have they made any attempts to locate the corners. In all cases my clients have been to their property and at least attempted to locate the corners. In most cases they have had their property surveyed. In some cases they had the survey recorded in the Pitkin County property records. Some of them have even tried to pay taxes. Based on the foregoing, the possession of my clients is superior to Pitkin County.

You asked why my clients did not challenge the tax deed title for over ten years? They did not and in most cases have not challenged the title because there has been no reason for them to do so. The County's history over this past decade has been to institute a quiet title action and make a deal with my client to give them a portion of the property in dispute. In all cases the my clients and other individuals similarly situated have had all the use and possession of the property they wished without any interference from the County. Attorneys as you know are quite expensive and a creature of society to be avoided whenever possible.

You asked me to address my clients' rights to the property. Their rights are based on the fact that the County's tax sales, conducted in the early nineteen hundreds, frequently if not always failed to comply with many substantial portions of the statutes that were then in effect. A void tax deed is of no force or effect. If a court were to find that no title vested in the County pursuant to the tax deeds that were issued inconsistent with the statutes, then anyone could adversely possess the property. While adverse possession does not apply against a governmental entity, if the property is not owned by the County, then adverse possession is possible. Further, many of my clients acquired title in good faith, for good and valuable consideration, based on the knowledge that in 1970 Mr. Blanning had prevailed on a tax deed claim against the County. My clients received a discount from fair market value because of the cloud on the title created by the County's void or voidable tax deed and the County's wrongful refusal to accept taxes when tendered.

You asked the difference between "record title" and a "wild deed". The difference is that either a valid deed or a wild deed that specifies a property creates a record title in that grantee. A grantee with record title is one who appears in the chain of title. A grantee who appears of record without any apparent connection to a predecessor in title has record title pursuant to a wild deed.

The Arnold & Porter Non-Opinion Letter:

I have also reviewed the Arnold & Porter non-opinion letter dated September 5, 1990, submitted as a part of Pitkin County's testimony. I would make the following observations:

Page one contains misstatements about the premise regarding who owns the land, misstates the number of claims, and misstates the number of acres.

Page two specifies that the non-opinion is based on "limited review of certain documents". Consequently, this letter is incomplete and meaningless without seeing the exhibits A - G which are described on page 2 and page 3. Obviously, if the information provided to Arnold & Porter was not accurate and representative, their opinion (or non-opinion) is not either.

On page three the non-opinion is allegedly based on fifty-four claims as being a representative sample. There has been no verification that this is a representative sample. Which fifty-four claims? Why are they representative? Were they really random rather than representative? Were they perhaps selected for some specific purpose? Further, the Arnold & Porter letter states "LETTER NOT A TITLE OPINION". It goes on to say that they did not look beyond "record title" as given to them by some anonymous self-appointed individual. If one is willing to assume that all County tax sales were conducted properly, then the record title indicates that the County has good title. However, it is absolutely necessary to examine the tax sale proceedings to determine whether the County's title is good, void or voidable. I would suggest that page 4 ignores the entire basis for the controversy. The key issue really is the validity of the treasurer's deeds.

II. The Mining Claims

Regarding the Denver and Colorado Investment Company, it appears that Arnold & Porter failed to check the archives in the Secretary of State's office. I am informed that the records that the Secretary of State keeps currently only go back seven years, and that it is necessary to go to the archives in Denver to ascertain what companies were in prior good standing. Colorado law does not require that a company remain in good standing forever, merely that it be in good standing during the times that it transacted business.

The allegations regarding Aspen Western Corporation and Aspen Western Mining Limited, are true. The allegations regarding the New Ophir Mining Company, merely indicate that the attorney from Arnold & Porter failed to properly check the Secretary of State's archives. My information concerning New Ophir Mining Company is included above on page one of this letter.

The references made to the Tourtellotte and Park Mining Company are correct. The references made to the Park Tunnel Mining and Milling Company are incorrect. See above on page two.

Page five goes on to discuss "obviously wild deeds". It is in each case necessary to know the specific property to determine the chain of title and to determine whether the deeds are in fact wild deeds or merely deeds that were issued subsequent to the void or voidable treasurer's deed. I suspect that based on the information provided to Arnold & Porter, they did not look at the chain of title prior to the void or voidable deed to Pitkin County. An entity with title prior to the treasurer's deed would be considered to be a wild deed by Arnold & Porter. If the "record chain" given to Arnold & Porter begins with the treasurer's deed then they have not adequately reviewed the chain of title.

The real unanswered question is: when the statutes of limitations has not run, what is the effect of a void or voidable treasurer's deed?

The allegations contained on pages five and six as a, b, c, and d are all true however, without knowing recording information it is difficult to confirm or deny these. I would suggest that the discussion on page seven, appears to be based on an incomplete chain of title being presented to Arnold & Porter. Further, Arnold & Porter is not correct when it says "it is, of course, axiomatic that a person who has never acquired title to property is unable to convey title to such property". C.R.S. §38-41-108 and 109 as well as §38-41-101 provide for a statutory mechanism where a person who has no title to a property can acquire it by adverse possession or a person who has color of title may acquire it by adverse possession. I suspect that the review of the chains of titles that reveal to Arnold & Porter, that the Blanning entities never had title is based on a chain that fails to go back to the patent. In addition, if the reviewer assumed a treasurer' deed was valid, this would also explain their error.

Arnold & Porter reached the wrong conclusion based on many incorrect or incomplete assumptions. I am troubled on page eight that there is no basis for Arnold & Porter's conclusion that it is "highly unlikely that the Blanning entity named New Ophir Mining Company has any interest in these claims". Their basis if any, is an incomplete chain of title or the mistaken assumption that without further examination that the treasurer's deed is valid.

Arnold & Porter should be embarrassed by its incomplete work regarding the Denver and Colorado Investment Company. The Secretary of State does have a record of the Denver and Colorado Investment Company. Arnold & Porter apparently did not know how to check corporate records that were over seven years old. It is interesting to note that basically what Arnold & Porter says for the other deeds is no comment. On page ten, Arnold & Porter is misdirected in its analysis of the statute of limitations. They cite Welsh V. Levy, 200 Colo. 36, 612 P.2d 80 (1980) which makes it indisputable that the statute of limitations does not run against a party in possession. Arnold & Porter goes on to note that "as to the second requirement of possession, this is a question of fact on which we can provide little guidance." My clients admit that they have no claim if the

County's tax deeds are valid. To date no litigation has ever been completed that has found that the County actually has good title. On the contrary, my clients reasonably believe that the BOCC had void tax deeds based on Board of County Commissioners vs. Blanning, 479 P.2d 404 (1970).

It is curious to note that on page twelve that Arnold & Porter evades what is perhaps one of the most serious issues. That issue is the significance of Pitkin County's refusal to accept tax payments from my clients and further that the County Attorney - Sandra P. Stuller memo (copy attached as Exhibit 7) instructing the County Treasurer not to accept taxes.

I thank you again for the opportunity to testify concerning and participate in the discussion of the title issues which affect this exchange. I appreciate your obvious preparation to become fully informed prior to the hearings. Your courtesy and professional demeanor, notwithstanding our clear difference of opinion, was sincerely appreciated.

Sincerely,

WRIGHT & ADGER

By: ______________________
Gary A. Wright

GAW/jw
Enclosures

E:\jcb\Blanning.1

Exh. "1"

DEPARTMENT OF ADMINISTRATION

DIVISION OF STATE ARCHIVES AND PUBLIC RECORDS

SEARCH NO. 79-3289

TO:
James C. Blanning, Jr.
P O Box 125
Victor, Colorado
80860

FROM:

STATE ARCHIVIST
Division of State Archives and Public Records
1313 Sherman Street
Denver, Colorado 80203

Telephone: (303) 839-2055

GENERAL INFORMATION REQUEST Articles of Incopration: The Denver & Colo. Investment Company

Information Requested:

☐ Record in our custody.

☒ Record not in our custody.

☐ Information requested enclosed.

☐ Record not serviced or certified by this agency.

☐ $________ PLEASE REMIT THIS AMOUNT FOR COPYING, HANDLING, AND MAILING, OR

$________ PLEASE REMIT THIS AMOUNT FOR CERTIFIED COPY OF DOCUMENT.

MAKE CHECK OR MONEY ORDER PAYABLE TO THE COLORADO STATE ARCHIVES.

☐ Additional information required:

☐ Write directly to.

☐ Inquiry referred to:

☒ Other: No record found.

Dated May 21, 1979

George E Warren
STATE ARCHIVIST

By Ollie Campbell

GEW/DC/pv

SA:183 Rev. 11/73,2/76,7/78,3/79

Exh. "2"

ARTICLES OF INCORPORTAION

OF

THE NEW OPHIR MINING COMPANY.

[illegible] PRESENTS, That we, the undersigned, David R. C. Brown, G. A. Wells and L. A. T. Brown, have associated ourselves together for the purpose of incorporation under the General Incorporation Laws of the State of Colorado, and for the purpose of forming THE NEW OPHIR MINING COMPANY, and to accomplish this result do hereby make, sign and acknowledge in triplicate these certificates in writing, which, when filed, shall constitute the Articles of Incorporation of the said The New Ophir Mining Company.

ARTICLE I.

The name of the said company shall be THE NEW OPHIR MINING COMPANY.

ARTICLE II.

The objects for which the said company is formed are, to acquire, hold, work, lease, buy, sell and operate mines of gold, silver, copper, lead and other mineral bearing ores of all kinds in the State of Colorado, and particularly in the County of Pitkin, in said state; and to buy, own, control, lease, operate and sell smelting plants, cyanide mills, stamp mills, chlorination mills, concentrating mills and/other reduction plants or works of any kind or description for the handling and treating of ores; and to do any and all things necessary and needful for extracting ores from the ground, carrying any minerals or metals of any kind, and separating the said metals or minerals from the rock in which they are found; to carry on a general mining business of any kind or description; and to do all things incidental to the general business of mining and carrying out the objects and purposes herein set forth.

ARTICLE III.

The amount of the capital stock of said company shall be ($50,000.00) Fifty Thousand Dollars to be divided into 50,000 shares of the par value of $1.00 each. Said stock to be non-assessable.

ARTICLE IV.

The term of existence of said company shall be [illegible]

ARTICLE V.

The number of directors of said company shall be three [illegible] names of those who shall manage the concerns of said company for the first year of its existence and until their successors are elected and qualified, shall be David R. C. Brown, C. W. Wells and L. A. W. Brown.

ARTICLE VI.

The operations of said company shall be carried on the the County of Pitkin and State of Colorado, and the principal office of said company shall be located in the City of Aspen, in said county and state, and said company shall have the right to carry on business in said county and state, with the right of carrying on said business in any other county or counties in said state of Colorado.

ARTICLE VII.

The Board of Directors of said company shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of the company, and not inconsistent with the laws of the State of Colorado, for the purpose of carrying on said business within the objects and purposes of such company.

IN WITNESS WHEREOF, the said incorporators have hereunto set their hands and seals in triplicate this 14th day of July, A. D. [illegible]

David R C Brown

G W Wells

L A W Brown

STATE OF COLORADO)
) ss.
County of Pitkin)

I, Charles F. Brown, a Notary Public in and for said county and state, do hereby certify that David R. C. Brown, G. A. Wells, and L. A. T. Brown, who are personally known to me to be the same persons described in and who executed the within and foregoing triplicate Articles of Incorporation, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same, as their free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 10th day of July, A. D. 1913.

My commission expires July 20th 1913.

Charles F. Brown
Notary Public.

RECORDED AT 11:40 A.M. 16 APRIL, 1980 LORETTA BANNER, RECORDER

Exh. "3"

223378
RECEPTION

BOOK 387 PAGE 700 DC-1 (Rev. 4-74)

STATE OF COLORADO

1876

DEPARTMENT OF STATE

PROFIT CERTIFICATE OF INCORPORATION

I, MARY ESTILL BUCHANAN,

Secretary of State of the State of Colorado, hereby certify that pursuant to the provisions of the Colorado Corporation Act, Articles of Incorporation were delivered to this office, found to conform to law, and filed in this office.

Accordingly the undersigned, by virtue of the authority vested in me by law, hereby issues this Certificate of Incorporation of

---------------------THE NEW OPHIR MINING COMPANY, INC.-------------
(A COLORADO CORPORATION)

Dated this --Twenty-Fourth- *day of* -----July----- *A. D.* 19 75

1876

Mary Estill Buchanan
SECRETARY OF STATE

FILED in the office of the Secretary of State of the State of Colorado
JUL 24 1975

Form D1 (Rev. 4/70)

ARTICLES OF INCORPORATION
(SEE INSTRUCTIONS BELOW)

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a corporation under the Colorado Corporation Act, adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation is THE NEW OPHIR MINING COMPANY, INC.

SECOND: The period of its duration is 20 years

THIRD: The purpose or purposes for which the corporation is organized are: (See attached pages)

FOURTH: The aggregate number of shares which the corporation shall have au[illegible]ity to issue is 50,000 Shares at No Par Value

FIFTH: Cumulative voting of shares of stock is not authorized.

SIXTH: Provisions limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation are:

SEVENTH: The address of the initial registered office of the corporation is P.O. Box 1107, Aspen, Colorado 81611

and the name of its initial registered agent at such address is Kenneth A. Senn, Attorney at Law, P.O. Box 1107, Aspen, Colorado 81611

EIGHTH: Address of the place of business: P.O. Box 1107, Aspen, Colorado 81611

(If different from registered office)

NINTH: The number of directors constituting the initial board of directors of the corporation is 3, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualify are: (At least 3.)

NAME	ADDRESS
James Wingers	20 Queen Street, Aspen, Colorado
Michael Pokress	980 Aspen Alps Road, Aspen, Colorad
Andre Ulrych	Buttermilk West, Aspen, Colorado

TENTH: The name and address of each incorporator is: (At least 3.)

NAME	ADDRESS
James Wingers	20 Queen Street, Aspen, Colorado
Michael Pokress	980 Aspen Alps Road, Aspen, Colorad
Andre Ulrych	Buttermilk West, Aspen, Colorado

Dated ______, 19___

James Wingers
Michael Pokress
Andre Ulrych
Incorporators

STATE OF Colorado
COUNTY OF Pitkin } ss.

I, Marguerite H. Caldwell, a notary public, hereby certify that on the 9th day of July, 1975, personally appeared before me James Wingers, Michael Pokres and Andre Ulrych, who being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

In witness whereof I have hereunto set my hand and seal this 9th day of July, A. D. 1975.

My commission expires Jan 17, 1979

Marguerite H. Caldwell
Notary Public

Submit in duplicate

Note: If this form is used— "SUBMIT IN DUPLICATE" means the original and carbon copy - TYPED. This form is not acceptable with ATTACHMENTS or TYPING ON REVERSE SIDE. If there is not adequate space, Form D1 may be used as a pattern or guide. Please use legal or letter size typing paper. Type on one side only.

Shares of stock must have a dollar amount par value, or a statement that each share is of "no par value."

ADDRESS means street name and number, city or town, and United States post office zip code designation. In the event that by reason of rural location, or otherwise, a street name, number, town or city shall not exist, other appropriate "address" fixing as near as possible the actual physical location may be substituted, but in all such exceptional cases the rural free delivery route, the county, and the United States post office zip code designation shall be included.

THIRD: The purpose or purposes for which the corporation is organized are: To acquire, hold, work, lease, buy, sell and operate mines of gold, silver, copper, lead and other mineral bearing ores of all kinds in the State of Colorado, and particularly in the County of Pitkin, in said state; and to buy, own, control, lease, operate and sell smelting plants, cyanide mills, stamp mills, chlorination mills, concentrating mills and other reduction plants or works of any kind or description for the handling and treating of ores; and to do any and all things necessary and needful for extracting ores from the ground, carrying any minerals or metals of any kind, and separating the said metals or minerals from the rock in which they are found; to carry on a general mining business of any kind or description; and to do all things incidental to the general business of mining and carrying out the objects and purposes herein set forth.

Exh "A" Park Tunnel -- [illegible]

Recorded at 1:49PM May 1979 Loretta Banner Recorder Reception NO. 214896

BOOK 389 PAGE 65

369 65

STATE OF COLORADO

DEPARTMENT OF STATE

CERTIFICATE·

I, **MARY ESTILL BUCHANAN,** *Secretary of State of the State of Colorado hereby certify that the prerequisites for the issuance of this certificate have been fulfilled in compliance with law and are found to conform to law.*

Accordingly, the undersigned, by virtue of the authority vested in me by law, hereby issues A CERTIFICATE OF AMENDMENT TO TOURTELLOTTE AND PARK MINING COMPANY, FORMERLY KNOWN AS KENO MINING COMPANY.

Mary Estill Buchanan
SECRETARY OF STATE

DATED MAY 11, 1979

Exh. "5"

ARTICLES OF INCORPORATION
OF
THE PARK TUNNEL MINING & MILLING COMPANY.

- - - 0 - - -

WHEREAS, Robert Shaw, W.R.Foutz and F.M.Yates, all of the City of Aspen, in the County of Pitkin and State of Colorado, have associated themselves together for the purposes of incorporation under the general incorporation Acts of the State of Colorado, they do therefore make, sign and acknowledge these duplicate certificates in writing, which when filed shall constitute the Articles of Incorporation of The Park Tunnel Mining & Milling Company.

ARTICLE 1. The name of said company shall be ,-

THE PARK TUNNEL MINING & MILLING COMPANY.

ARTICLE 2. The objects for which said company is created, are the acquisition by location, purchase or lease, and the mining operation, leasing and selling, of all and any mining lands and claims in the County of Pitkin, State of Colorado. To acquire, own and use power sites and plants, mills or reduction works incident to the treatment of earth and rock containing ores; as well as the construction, purchase, lease and sale and operation of all and any needful roads, trams, railways, mills and processes and appliances for conveying, extracting, reducing, treating and transporting of all and any mineral producing ores, the mining, purchase and sale of the same and the doing of all acts necessary to the prosecution of said business in said State of Colorado, and particularly in the said County of Pitkin.

ARTICLE 3. The term of existence of said company shall be twenty years.

ARTICLE 4. The capital stock of said company shall be One Hundred and Fifty Thousand Dollars, divided into One Hundred and Fifty Thousand shares of One Dollar each. Cumulative voting is allowed.

ARTICLE 5. The number of directors of said company shall be five, and the names of those who shall manage the affairs of the company for the first year of its existence, are Robert Shaw, W.R. Foutz, F.M.Yates, Edward Turner and W.H.Cornwall.

ARTICLE 6. The principal place of business of said company shall be carried on in the said County of Pitkin, Colorado, and the principal office of said company shall be kept at the City of Aspen, Pitkin County, Colorado.

ARTICLE 7. The stock of said company shall be non-assessable.

ARTICLE 8. The Board of Directors shall have power to make such prudential by-laws from time to time as they may deem proper for the management of the affairs of the company, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such company.

IN WITNESS WHEREOF, The said incorporators have hereunto set their hands and seals this 21st. day of July A.D.1917.

Robt Shaw (SEAL)

W. R. Foutz (SEAL)

Frank M Yates (SEAL)

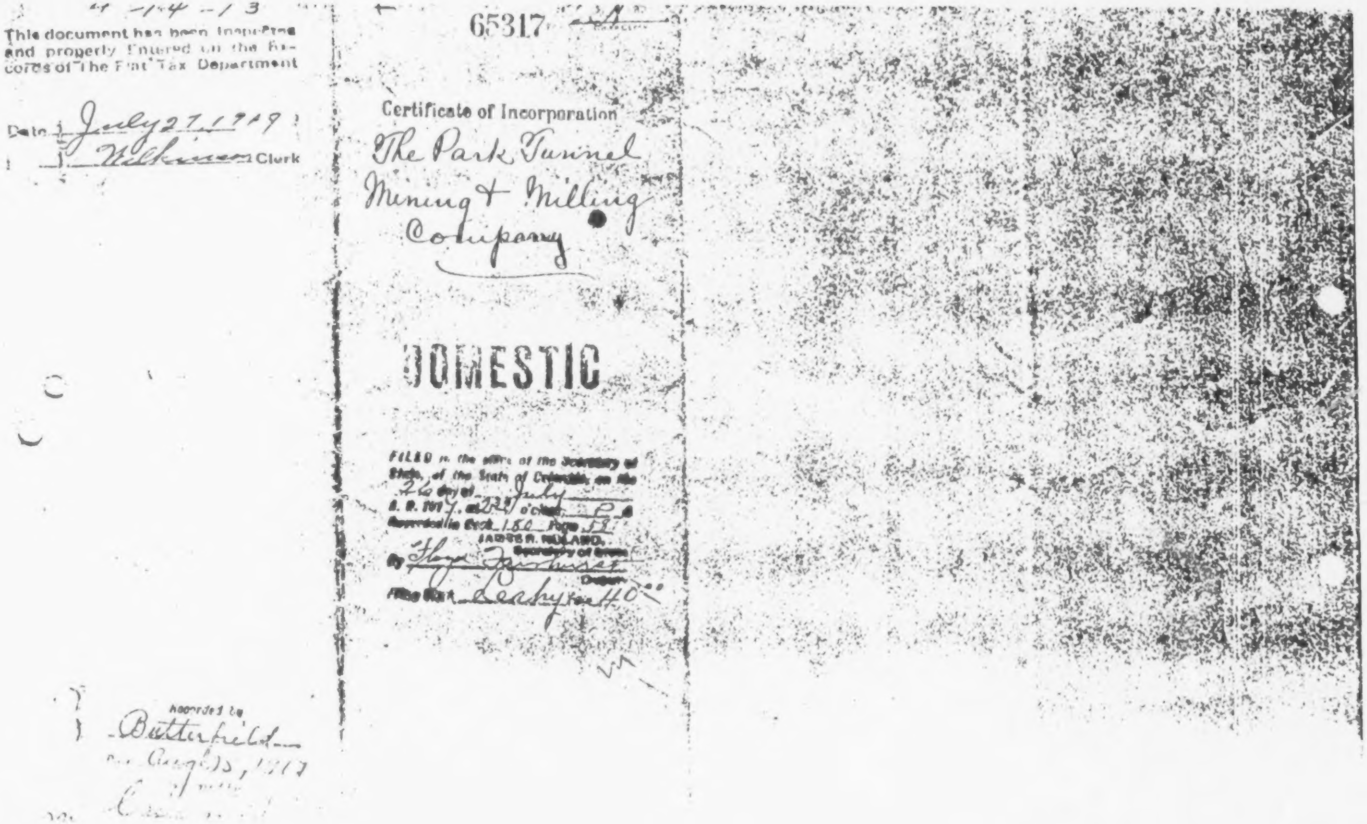
STATE OF COLORADO | ss.
County of Pitkin |

I, Harold W.Clark, a Notary Public in and for said County and State, do hereby certify that Robert Shaw, W.R.Foutz and F.M.Yates, who are personally known to me to be the persons whose names are appended to the above and foregoing articles of incorporation, and who executed the said Articles in duplicate, appeared before me this day in person, and severally and personally acknowledged the same to be the free and voluntary act and deed of each of them.

WITNESS my hand and notarial seal at Aspen, Colorado, this 21st day of July A.D.1917.

Harold W Clark
Notary Public.

My commission expires February 16th, 1919.



4-14-13

This document has been Inspected and properly Entered on the Records of The Flat Tax Department

Date July 27, 1919

Wilkinson Clerk

65317

Certificate of Incorporation

The Park Tunnel Mining & Milling Company

DOMESTIC

FILED in the office of the Secretary of State, of the State of Colorado, on the 26 day of July A. D. 1917, at 2:25 o'clock P M. Recorded in Book 150 Page 58

JAMES R. NOLAND, Secretary of State.

By Floyd [illegible] Deputy.

Filing Fee Leahy $40.00

Recorded by Butterfield on Aug 13, 1917

[illegible]

Exh. "6"

FILED

3 AUG '76

[illegible] OF STATE

ARTICLES OF INCORPORATION
OF
THE PARK TUNNEL MINING & MILLING COMPANY

KNOW ALL MEN BY THESE PRESENTS, that we, JAMES C. BLANNING, JR., JOAN DOAR BLANNING, and VIRGINIA W. BLANNING, the undersigned natural persons of the age of 21 years or more, acting as incorporators of a corporation under the provisions of the "Colorado Corporation Act", adopt the following articles of incorporation:

ARTICLE I

The name of this Corporation is: The Park Tunnel Mining & Milling Company.

ARTICLE II

The period of duration of the Corporation is perpetual.

ARTICLE III

The purpose for which the Corporation is organized is: the renewal and reincorporation of that certain PARK TUNNEL MINING & MILLING COMPANY as incorporated under Articles of Incorporation of said corporation dated the 21st day of July A. D. 1917. The purpose and objects for which said company is created, being the same as those of said corporation are: the acquisition by location , purchase or lease , and the mining operation, leasing and selling, of all and any mining lands and claims in the County of Pitkin, State of Colorado. To acquire, own and use power sites and plants, mills or reduction works incident to the treatment of earth and rock containing ores; as well as the construction, purchase, lease and sale and operation of all and any needful roads, trams, railways, mills and processes and appliances for conveying, extracting, reducing, treating and transporting of all and any mineralproducing ores , the mining , purchase and sale of the same and the doing of all acts necessary to the prosecution of said business in said State of Colorado, and particularly in the County of Pitkin.

ARTICLE IV

The aggregate number of shares which the Corporation shall have the authority to issue is 50,000 shares of common stock, all of which shares shall be without par value.

ARTICLE V

Shareholders shall have the pre-emptive right to purchase additional shares of the Corporation issued from time to time by the Board of Directors. Such pre-emptive right shall be exerciesed in the respective ration which the number of shares held by each shareholder at the time of such issue bears to the total number of shares outstanding in the names of all shareholders at such time.

ARTICLE VI

The Board of Directors shall have the power to make, alter, amend or repeal such Bylaws not inconsistent with the laws of the State of Colorado and these Articles of Incorporation as it may deem best for the management of the Corporation.

ARTICLE VII

The address of the Corporation's initial registered office is # 21, 423 Hyman Street, P. O. Box 60, Aspen, Colorado 81611, and the name of its initial registered agent at such address is James C. Blanning, Jr.

ARTICLE VIII

Three directors shall constitute the initial Board of Directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualified are as follows:

James C. Blanning, Jr., 423 Hyman Street, Aspen, Colorado 81611
Joan Klar Blanning, 423 Hyman Street, Aspen, Colorado 81611
Virginia W.lanning, 112 Southhird Street, Victor, Colorado 80860

ARTICLE IX

The names and addresses of the incorporators hereof are the same as those three directors shown in ARTICLE VIII.

IN WITNESS WHERE OF, we have hereunto set our hands and seals this 30th day of July, 1976.

James C. Blanning Jr
James C. Blanning, Jr.

Joan Klar Blanning
Joan Klar Blanning

Virginia W. Blanning
Virginia W. Blanning

STATE OF COLORADO)
COUNTY OF PITKIN) ss.

I, Rita L. Dutsch, a notary public in and for the County of Pitkin, State of Colorado, do hereby certify that James C. Blanning, Jr, Joan Klar Blanning, and Virginia W. Blanning, who are personally known to me to be the persons whose names are subscribed to the foregoing Articles of Incorporation, appeared before me this day in person and upon oath swore to the truth of the facts herein stated and acknowledged that they signed and delivered said instrument of writin g as their free and voluntary act.

Given under my ahdn and official seal this 30th day of July 1976.

My commission expires 7-12-78.

Rita L. Dutsch
Notary Public

Exh."7

MEMORANDUM

TO: Carol Foote

FROM: Sandy Stuller

DATE: July 10, 1979

RE: Little Rule Mining Claim

Carol:

I do not see any basis for any argument by Jim Blanning that his tender of $216.58 creates an inforceable interest in the Little Rule.

Once struck off to the County, a person may only, from my reading of the statutes, acquire an interest in property sold for taxes by:

1. negotiating for the purchase of the certificate from the Board of County Commissioners pursuant to C.R.S. 1973, Section 39-11-122;

2. or by redemption pursuant to C.R.S. 1973, Section 39-11-142(4).

Neither Jim, nor the Bourquins did either of the above. Given that, you are neither under an obligation, nor do you have authority, to retain the funds.

If Jim feels the sale was void and his deed prevails he can accomplish his ends by a suit in quiet title. His tender does not obligate you nor us to take any action on his behalf with respect to the mining claim.

I would suggest that you return the check (with interest, if any has been accruing) with your statement that you have no authority to retain it, nor any authority to apply it as he requests. Again, just refuse to accept it if he attempts to tender payment. Obviously, if no taxes are accruing on the claim you have no debt to which to apply the money.

MEMORANDUM

TO: Carol Foote

RE: Mining Claims

DATE: September 18, 1979

FROM: Sandy Stuller

Carol:

I have been doing some reading concerning the mining claims that have not been properly assessed and find, as follows:

Statutes

Four statutory provisions are relevant. They are:

C.R.S. 1973, Section 39-5-125"Omission-correction of errors. (1) Whenever it is discovered that any taxable property has been ommitted from the assessment roll of any year or series of years, the assessor shall immediately determine the value of such omitted property and shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for the prior years."

C.R.S. 1973, Section 39-10-101 (as amended) "Collection of taxes. (2)(a) If, after the tax list and warrant has been received by him, the treasurer discovers that any taxable property then located in his county has been omitted from the tax list and warrant for the current year or for any prior year and has not been valued for assessment, he shall forthwith list and value such property for assessment in the same manner as the assessor might have done and shall enter such valuation for assessment on the tax list and warrant and extend the levy. Such entry shall be designated as an additional assessment and shall be valid for all purposes, the same as though performed by the assessor. (b) The taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be instituted or any other action to collect the same be commenced, more than six years after the date on which the tax was or is payable; except that interest shall not be charged prior to the date on which additional assessment is made. (c) In the case of fraudulent action with intent to evade tax, the tax, together with interest thereon, may be assessed, or proceedings for the collection of such taxes may be begun, at any time."

C.R.S. 1973, Section 39-10-102(2)"...(2) The treasurer shall accept payment of taxes tendered by any person and issue a receipt therefor at any time after the tax list and warrant has come into his hands."

C.R.S. 1973, Section 39-10-105(as amended) "(1) The treasurer shall issue and, upon request of an individual tax payer... a receipt for each payment of taxes received, which shall state the amount of taxes paid...and a notation of any taxes levied thereon for prior years which are unpaid and delinquent...."

Consequently, with respect to any claims that were omitted from prior year tax lists and not valued for assessment, you must:

1. Enter the claims on the tax list;
2. Show unpaid assessments for only the last six years;
3. Accept any tender of unpaid taxes. This conclusion is premised on:
   - a) Section 39-10-102(2) which says you must accept payment from anyone; and
   - b) Section 39-10-105 which, by implication, indicates that someone may pay less than the entire amount of delinquent taxes due.
4. Take the claims to tax sale next year for any unpaid taxes due.

The question then arises as to whether the claims identified by Blanning come within the classification of lands "omitted from the tax list...for any prior year and has not been valued for assessment".

With respect to the Pearl, Champion, and Change mining claims, two principles come into play:

1. First, " a sale for taxes, through upon due advertisement, after a sale of the same lands to the County which is still unredeemed and the land unsold, is void." Emerson v. Valdez, 24 Colo App 458, 135 P 137 (1913).
2. Once land is struck off, no taxes are payable until redemption or sale. Bennett v. Shotwell, 118 Colo 206, 194 P 2nd 335 (1948).

Under the Emerson case, each sale after the first certificate was issued was invalid, unless or until the previously issued tificate was cancelled. Consequently, only if and when every cercertificate of purchase was cancelled (not just the last one) are taxes properly assessed against the land. You should, then, value and assess these claims for unpaid taxes only when it is demonstrated that each and every certificate of purchase issued for these claims, all through the years, has been cancelled. I would suggest that it is Jim's job to show that if he wishes to require that you assess these lands. Notice that certificates of sale do not expire automatically, but may be cancelled only by the BOCC 30 years after their issuance. C.R.S., 1973, Section 39-11-142(6).

With respect to the Ashcroft Mammoth, Lulu S and Maud S, the question is whether the tax deed is void or voidable because of the use of an incorrect mineral survey number during the sale proceedings:

1. The statutes require only that the land be "sufficiently described on the tax roll to identify the same", C.R.S. 1973, Section 39-11-112.
2. The purpose of the requirement is to make the owner aware of what land is charged with the tax; and enable a tax sale purchaser to determine what land is offered for sale. Both of these may be accomplished even if an incorrect mineral survey is used (name and location may have been accurrately identified).

3. In addition, C.R.S. 1973, Section 39-11-133 provides that any holder of a treasurer's deed may initiate a quiet title action to determine the validity of his deed.

The effect of the foregoing is that (1) it is not clear that the use of an incorrect mineral survey number has voided the deed and (2) the BOCC, if it wishes to, may initiate a quiet title proceeding to get a determination as to its validity. Absent such a determination, however, I do not feel you are in a position to declare it invalid and proceed to assess back taxes.

In effect, then, unless you disagree with any of the above, I feel the assessment of back taxes, and acceptance of payment of back taxes assessed, is not required at this time; and, more importantly, would be improper.

Senator **Wirth**. Yes. You can Federal Express it, put it in the mail—if it gets here, if it does not get here, let us know and we will certainly set it up for you.

Gentlemen, we thank you very much for being here.

I must say, I am sort of struck by 100 years of history passing before me. You know, it used to be, in Aspen—and Pitkin County, I suppose, Commissioner True—it used to be that if you wanted to get rich quick, you jumped on your horse and put a bandanna over your face and went in and robbed a bank.

The rules have changed in 1990, 100 years later. If you want to get something, what you do is to go back and hire a good lawyer like Mr. Wright and see if you can rob the public in a different kind of a fashion. I do come out of this with that point of view, Mr. Blanning.

You know, I am sure that you view this differently—but the way in which people are trying to effectively hold up the taxpayer and the Federal Government, I just think is just appalling. I hope that we will be able to, on behalf of the taxpayers and the citizens of the country, obtain this land for the White River Forest and those wilderness areas in this exchange, and have for the taxpayers of Pitkin County and Eagle County the use of the Sopris Tree Farm, in the kind of public way that we want.

It is overwhelmingly the greatest good for the greatest number for this to happen on both sides, and that is why I have introduced this legislation, and I hope that it goes ahead, and I would hope that after we get all this on the record we can review the issues, and we can complete action on this. I just do not see any reason not to do so, in terms of what I have heard today, anyway. Anyway, I hope we can get it done. We look forward to hearing from all of you.

Thank you very much.

[Whereupon, at 4:47 p.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

FOREST
LIEU SELECTION
COMMITTEE

1736 Williams Highway
Grants Pass, Oregon 97527
(503) 476-5593

Attachment A

May 31, 1990

FLS
Committee Members

California
Eugene Snow
(916) 221-2357
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Andy Rutledge
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Ralph L. Smith Jr.
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Idaho & South Dakota
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(406) 442-7443
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Washington & Oregon
B.K. Herndon
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Robert Booth
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DATA CONCERNING THE LOCATION AND STATUS OF THE LANDS INCLUDED IN THE BLM AND FOREST SERVICE INVENTORIES ACT OF JULY 6, 1960

B. K. Herndon, Chairman

Schedule #1 shows the total acreage by State and for the Forest Service areas by Region. Also shown is the number of separate tracts, the acreage on the local tax rolls and the acreage relinquished under the Act of June 4, 1897 but for which no lieu selection was ever filed.

Schedule #2 shows the acreages divided by State and Forest Service Region categorized as follows:

Col. 2 - What the Washington Office Tract Books show as to private or U. S. ownership as of the date these books were supplanted by the current Master Title Plat system (occurring generally in the mid to late 1960s in most areas).

Col. 3 - Shows the acreage indicated to be privately owned on the BLM or Master Title Plats at the time our Committee last inspected those records (ranging from 1966 to 1984).

Cols. 4 & 5 - Show for the Forest Service lands whether the Forest Service status records showed ownership as being privately owned or U. S. owned or our inspection was inconclusive. Most of these records were last inspected in the early 1980s.

Schedule #3 lists the lands which are located in Wilderness areas in the National Forests and in National Park areas for the BLM areas, the ownership summary of that land being shown at the end of the schedule.

Our Committee has also checked the BLM and Forest Service Inventories against the Thomas report maps to determine the lands located within the proposed Owl Study areas with the following results:

No BLM lands are located therein
440 acres located in Forest Service areas in Oregon are owned as follows:
120 acres by Herndon
40 acres by the Heirs of John T. Murphy
120 acres by the successors to Cal-Ore Land Co.
40 acres by the Heirs of Conrad Kohrs
120 acres by the Heirs of John T. English

On the basis of sampling research the Committee estimates that the heirs are either non-existent or cannot be located for approximately 2,000 acres of the land on the Inventories which land, under existing law would escheat to the States in which the land is located. Also under existing law the counties are due considerable amounts of unpaid property taxes on the 10,000 plus acres not currently on the tax rolls.

Schedule 1

Act of July 6 1960 Inventories
Forest and Selection [illegible] - [illegible]
Analysis - Revised 5-27-90

Number of Tracts	U S Forest Service Lands	Total	Outstanding Yes	Outstanding No	Located in these Counties:	To Selections
	Region 1:					
10	Idaho	1155	1115	40	Bonner County	915 acres
	S-T	1155	1115	40		915
	Region 2:					
15	Colorado	984	599	385	Park, Jefferson & Teller	285
6	(See R-4) Wyoming	962	-0-	962	Carbon, Bighorn & Albany	962
26	South Dakota	2737	893	1844	Pennington, Meade & Lawrence	1990
47	S-T	4683	1499	3190		3237
	Region 3:					
11	New Mexico	676	460	216	San Miguel, Catron, Grant & Lincoln	256
28	Arizona	1660	358	1302	Apache, Coconino, Yavapai & Navajo	1029
39	S-T	2336	818	1518		1285
	Region 4:					
15	Utah	1880	640	1240	Summit, Utah, Box Elder, Sevier + Carbon	1580
1	(See R-2) Wyoming	80	-0-	80	Sublette	60
2	(See R-5) California	320	-0-	320	Mono	—
18	S-T	2280	640	1640		1640
	Region 5:					
89	(See R-4) California	7127	4587	2540	Eldorado, Tuolumne, Madera, Fresno, Tulare, Kern, Ventura, Santa Barbara, Los Angeles, San Bernardino & Riverside	2878
	S-T	7127	4587	2540		2878
	Region 6					
21	Oregon	2080	720	1360	Clackamas, Wasco, Linn, Lane, Klamath & Jackson	560
4	Washington	199	199	-0-	Clallam & Snohomish	—
25	S-T	2279	919	1360		560
246	TOTALS	19870	9578	10292		10515
	Bureau of Land Management Areas					
9	Idaho	1398	1398	-0-		560
1	Colorado	32	32	-0-		—
2	South Dakota	60	60	-0-		45
2	New Mexico	120	-0-	120		120
—	Arizona	-0-	-0-	-0-		—
—	Utah	-0-	-0-	-0-		—
38	California	3289	2982	307		1261
31	Washington	2718	2718	-0-		562
—	Oregon	-0-	-0-	-0-		—
89	TOTALS	7637	7210	427		2563
317	GRAND TOTALS	27507	16788	10719		13078

Schedule 2

Act of July 6 [illegible] Inspection
Forest Lieu Selection Committee - [illegible]
Land Status Shown on BLM & USFS Records
Prepared 5-22-90

Number of Parts		Total Acres	BLM Rec. Tract Book, Show Private	BLM Status MTPs Show Private	U.S. Forest Service Records Show Private	U.S. Forest Service Show US	U.S. Forest Service [illegible]
	US Forest Service Areas:						
	Region 1:						
10	Idaho	1155	1155	1155	990	40	125
	S-T	1155	1155	1155	990	40	125
	Region 2:						
15	Colorado	984	984	910	430	514	40
6	(see p 4) Wyoming	582	582	-0-	-0-	582	-0-
26	South Dakota	2737	2737	2290	-0-	400	2337
47	S-T	4303	4303	3200	430	1496	2377
	Region 3:						
11	New Mexico	686	686	436	596	90	-0-
28	Arizona	1660	1500	728	199	901	560
39	S-T	2346	2186	1164	795	991	560
	Region 4:						
15	Utah	1880	1880	1400	760	1120	-0-
1	Wyoming	80	80	-0-	-0-	-0-	80
2	California	320	320	-0-	-0-	320	-0-
18	S-T	2280	2280	1400	760	1440	80
	Region 5:						
89	California	7127	7127	5978	3465	3662	-0-
	S-T	7127	7127	5978	3465	3662	-0-
	Region 6:						
21	Oregon	2080	2080	160	240	1840	-0-
4	Washington	199	199	159	159	40	-0-
25	S-T	2279	2279	319	399	1880	-0-
228	TOTALS	19970	19710	13105	6639	10069	3142
	Bureau of Land Management Areas						
9	Idaho	1398	1398	1078	N/A		
1	Colorado	32	32	32	"		
2	South Dakota	80	80	80	"		
2	New Mexico	120	120	80	"		
—	Arizona	-0-	—	—	"		
—	Utah	-0-	—	—	"		
38	California	3269	3269	2839	"		
37	Washington	2718	2718	2664	"		
—	Oregon	-0-	-	-	"		
89	Total	7637	7637	6774	"		
317	Grand Totals	27507	27347	19883	"		

Inspection dates on which the land status shown in Cols. 2, 3, 4 & 5 above is based ranged from 1966 to 1984. No inspection of the Forest Service status records for most of the South Dakota land was ever made.

Schedule 3

Act of July 6 1960 Inventories
Forest Lieu Selection Committee - B K Herndon, Chairman
Report 5-30-90

	Legal Description	Acres	Owner	County
	Located in Wilderness Areas - U.S Forest Service - Dept of Agric			
	California			
Inv No				
1	T13N R16E Sec36 SWNW	40	Herndon	Eldorado
2	Sec36 SENE-NWNE	80	"	"
15	T9S R29E Sec16 -SENW	40	Heirs of Cowden	Fresno
16	T11S R34E Sec36 -[illegible]	40	Rutledge	Kern
23	T25S R35E Sec16 -NENW	40	HERNDON	Ventura
36 }	T6N R17W Sec36 -NENE	40	Frontier Mining Inc	"
	Sec36 -SENE	40	Clark Minerals Corp	"
37	T6N R18W Sec16 -N½NW	80	Frontier Mining Inc	"
38	T5N R14W Sec36 -SENW-SENE	61	KS Cathcart	"
46 }	T9N R29W Sec36 -NWSW	40	Heirs of Forrester	Santa Barbara
	Sec36 -SESE	40	" "	"
47	T8N R24W Sec16 -N½-S½	480	Frontier Mining, Inc	"
48	T8N R24W Sec16 - Lot 1	32	" " "	"
	S-T	1093		
	Oregon			
Inv No				
21	T37S R6E Sec16 -S½SE	80	Herndon	Klamath
	TOTAL USFS	1163		
	Located in National Park Areas - Dept of Interior			
	BLM Inv - CALIFORNIA			
No				
19	T11S R28E Sec16 -SWSE-NWSW	48	Lloyd Hayes	Fresno
		32	Unknown	"
20	T19S R32E Sec36 -NWNE	40	Herndon	Tulare
	TOTAL - Nat'l Park	120		
	Grand TOTAL	1283		

Ownership Summary
Herndon 280 Frontier Mining + L Hayes 670 Forrester 80 Cowden 40
Cathcart 61 Rutledge 80 Unknown 32 Clark 40 TOTAL - 1283 acres

The maps from which the above listings were determined ranged in revision date from 1974 to 1986. The latest map data may reveal some changes that need to be made in the above list.

Attachment B

Relevant Statutes

ACT OF JUNE 4, 1897 (30 STAT. 11, 36)

That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: Provided further, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

ACT OF JUNE 6, 1900 (31 STAT. 588, 614)

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the Act of June fourth, eighteen hundred and ninety-seven, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: Provided, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof: * * *

ACT OF MARCH 3, 1901 (31 STAT. 1010, 1037)

That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the Act of June fourth, eighteen hundred and ninety-seven, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," shall be confined to vacant surveyed nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: Provided, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of land in lieu thereof: * * *

ACT OF MARCH 3, 1905 (33 STAT. 1264)

That the Acts of June fourth, eighteen hundred and ninety-seven, June sixth, nineteen hundred, and March third, nineteen hundred and one, are hereby repealed so far as they provide for the relinquishment, selection, and patenting of lands in lieu of tracts covered by an unperfected bona fide claim or patent within a forest reserve, but the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act shall not be impaired: Provided, That selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

ACT OF SEPTEMBER 22, 1922 (42 STAT. 1017)

That where any person or persons in good faith relinquished to the United States lands in a national forest as a basis for a lieu selection under the Act of June 4, 1897 (Thirtieth Statutes at Large, pages 11, 36), and failed to get their lieu selections of record prior to the passage of the Act of March 3, 1905 (Thirty-third Statutes at Large, page 1264), or whose lieu selections, though duly filed, are finally rejected, the Secretary of the Interior, with the approval of the Secretary of Agriculture, upon application of such person or persons, their heirs or assigns, is authorized to accept title to such of the base lands as are desirable for national-forest purposes, which lands shall thereupon become parts of the nearest national forest, and, in exchange therefor, may issue patent for not to exceed an equal value of national-forest land, unoccupied, surveyed, and nonmineral in character, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State. Where an exchange cannot be agreed upon the Commissioner of the General Land Office is hereby authorized to relinquish and quitclaim to such person or persons, their heirs or assigns, all title to such lands which the respective relinquishments of such person or persons may have vested in the United States: Provided, That such person or persons, their heirs or assigns, shall, within five years after the date of this Act, make satisfactory proof of the relinquishment of such lands to the United States by submitting to the Commissioner of the General Land Office an abstract of title to such lands showing relinquishment of the same to the United States, which abstract or abstracts shall be retained in the files of the General Land Office.

SEC. 2. That if it shall appear that any of the lands relinquished to the United States for the purpose stated in the preceding section have been disposed of or appropriated to a public use, other than the general purposes for which the forest reserve within the bounds of which they are situate was created, such lands shall not be relinquished and quitclaimed as provided therein, unless the head of the department having jurisdiction over the lands shall consent to such relinquishment; and if he shall fail to so consent, or if any of the lands so relinquished have been otherwise disposed of by the United States, other surveyed, nonmineral, unoccupied, unreserved public lands of approximately equal area and value may be selected and patented in lieu of the lands so appropriated or disposed of in the manner and subject to the terms and conditions prescribed by said Act of June 4, 1897, and the regulations issued thereunder: Provided, That applications to make such lieu selections must be filed in the General Land Office within three years after the date of this Act.

SECTION 6 OF THE ACT OF APRIL 28, 1930 (46 STAT. 257)

That where a conveyance of land has been made or may hereafter be made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands, or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Commissioner of the General Land Office is hereby authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto.

ACT OF JULY 6, 1960 (69 STAT. 534) (SISK ACT)

That the Secretary of the Interior shall certify to the General Accounting Office for audit the claim of any person who relinquished or conveyed lands to the United States as a basis for a lieu selection in accordance with the provisions of the fifteenth paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended and supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 3, 1901 (31 Stat. 1010, 1037), March 3, 1905 (33 Stat. 1264) and the Act of September 22, 1922 (42 Stat. 1067, 16 U.S.C. 483), and who has not heretofore received his lieu selection, a reconveyance of his lands, or authority to cut and remove timber, as provided by law, and there shall be paid to each such person whose claim is found to be valid the sum of $1.25 per acre for the lands conveyed by him to the United States with interest thereon at the rate of 4 per centum per annum, from the date on which application was last made by said person for a lieu selection, for reconveyance, or for authority to cut and remove timber or, if no such application has been made, from the date of this Act. Said payment shall be made from moneys appropriated under the heading "Claims for Damages, Audited Claims, and Judgments," and acceptance thereof shall constitute a full and complete satisfaction of all claims which the person to whom payment is made may have against the United States arising from the transaction in connection with which the payment is made. No person shall receive, or be entitled to receive, payment under this Act except upon demand therefor made in writing to the Secretary, or any officer of the Department of the Interior to whom the Secretary delegates authority to receive such demand, within one year from the date of this Act.

SEC. 2. (a) The right to receive payment under this Act shall not be assignable.

(b) For purposes of payment under this Act, the term "person who conveyed lands to the United States" includes (i) the heirs and devisees of any such person and (ii) any other person to whom he or his heirs or devisees lawfully assigned, before enactment of this Act, their right to a lieu selection or a reconveyance, or their right to receive authority to cut and remove timber. If more than one heir, devisee, or assignee is entitled to share in a payment to be made under this Act, each may individually claim and receive his proper share of the total amount of $1.25 per acre, with interest, which is payable hereunder.

(c) No agent or attorney acting on behalf of another to procure a payment under this Act shall demand, accept, or receive more than 10 per centum of the payment made, and any agreement to the contrary shall be null and void.

SEC. 3. The Act of September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483) is hereby repealed. No reconveyance of lands to which section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872).

SEC. 4. Any land for which the United States makes payment under section 1 of this Act, or any land for which it might make payment thereunder upon application by the proper party, but for which no demand is made, shall (unless it has heretofore been disposed of by the United States) be a part of the national forest, national park, or other area within the boundaries of which it is embraced, shall be administered as a part thereof, and shall be subject to the laws, rules, and regulations applicable to land set apart and reserved from the public domain in that national forest, national park, or other area.

Attachment C

COPY COPY

L
STATUS - R-5 - Los Padres
General

June 30, 1950

Director
Bureau of Land Management
Department of Interior
Washington, D.C.

Dear Mr. Clauson:

Within some of the national forests in the Western United States numerous tracts of land were reconveyed to the United States under the lieu selection act, but the lieu selections were not completed, so that the grantors did not and have not received any other land in lieu of those reconveyed nor have quitclaim deeds, as authorized by sec. 6 of the act of April 28, 1930 (46 Stat. 257) been applied for and issued.

The indefinite status of these reconveyed lands presents an administrative problem in the management of these national forests, because many of the tracts are intermingled with national forest lands. While the record title rests in the United States through the reconveyance, the former owners retain rights in the reconveyed lands until their selections are made and patented and have the privilege of a quitclaim deed under the aforementioned act of April 28, 1930. Additionally, the reconveyed lands have been removed from the local tax rolls, with resultant loss of revenue to the counties. These cases have been pending for years, which indicates that the former owners may have abandoned their plans to make lieu selections. In some cases they may be deceased and their heirs are unaware of their rights to either make lieu selections or apply for quitclaims.

Since this situation increases the administrative problems of the national forests and undoubtely affects the revenues of the counties, the Forest Service believes that it would be in the public interest if it could be corrected. The situation is quite prevelent on several national forests in California. The Regional Forester at San Francisco has inquired if the Forest Service, as an interested party, can appropriately obtain the names of former owners of land in this category and file recommendations that quitclaim deeds be issued to them and if the Bureau would honor such recommendations and take the action necessary to restore title in the former owners. Your advise as to whether this suggestion is feasible and desirable and if not, of other ways of clearing the records on these tracts of "no man's land" will be appreciated.

Sincerely yours,

Lyle F. Watts, Chief

By, Howard Hopkins

COPY COPY COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

58152 ADL.LSH

October 23, 1950

Mr. Lyle F. Watts
Chief, U.S. Forest Service
Department of Agriculture
Washington, D.C.

My dear Mr. Watts:

Reference is made to your letter of June 30, your reference L STATUS-R-5-Los Padros general, concernig the issuance of quitclaim deeds on incompleted lieu selections.

Section 6 of the act of April 28, 1930 (46 Stat. 257, 43 U.S.C. 872) provides for the issuance of quitclaim deeds to the party or part entitled thereto in circumstances such as you have set forth in your letter. Generally speaking the issuance of such deeds in initiated by the action of the lieu selector or his heirs or assigns.

The applicant for such a deed, if he is not the party who executed the deed to the United States, must show by an abstract of title or other statement of chain of title his interest in theland for which a quitclaim deed is sought. The applicant should also show the facts as to whether the lands have been assessed or sold by the state for taxes. If taxes have been paid, the statement should show who paid them. The applicant should also show whether the applicant is in possession of the land and whether there is any adverse claim. If there is such a claim, the facts relative thereto must be shown.

If a quitclaim deed is desired in the name of the present claima and if such claimant is not the original grantor of the land to the Government, such applicant must furnish an abstract of title showing privity of the title with the original grantor in addition to furnishing a statement giving the information indicated above. The abstract should be authenticated by the recorder of deeds or other proper official under his official seal and must show that the title memoranda are full and complete on all matters of record filed in his office,-including all conveyances, mortgages, or other encumbranc affecting in any manner whatsoever the title to the described land. If it is preferred, the abstract may be authenticated by an abstracto or an abstract company, satisfactory to this office.

Since the lands in which you are interested are intermingled with national forest land, or otherwise present an administrative problem to you, it appears that is may be in the public interest for your service to file, or have filed, an application by any party entitled to a quitclaim deed. Of course, the applicant should give the address of the party to whom the deed is to be sent, if issued.

Sincerely yours,

(Sgd) William Zimmerman, Jr.
Assistant Directer

Attachment D

FILED

JUL 8 1986

LOU ALEKSICH, JR., CLERK
By MARILYN G. SEWELL
Deputy Clerk

Tommy H. Butler
1625 Eleventh Avenue
Helena, MT 59601
(406) 444-2074

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION
* * * * * * * * * * * *

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC. a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation,
Plaintiffs,
vs.
THE UNITED STATES OF AMERICA,
Defendant.

Cause No. CV 86-141-M

COMPLAINT

COME NOW the Plaintiffs, the State of Montana; Farmer's Union Central Exchange, Inc., a Minnesota Corporation; Conquest Exploration Company, a Delaware Corporation; Hunt Oil Company, a Delaware Corporation; and Sun Exploration and Production Company, a Delaware Corporation, and for their cause of action against the Defendant, United States of America, assert and allege the following:

Count I

1. This is an action pursuant to 28 U.S.C. §2409a to quiet title to certain real property located within this judicial district in Flathead County, State of Montana, more particularly described in Exhibit "A" attached hereto and by reference incorporated herein (hereinafter referred to as "The Coal Creek State Forest").
2. Plaintiff, State of Montana, is the owner of all oil and gas and other fungible hydrocarbons subject to outstanding leases in the property described above; the Coal Creek State Forest.
3. Plaintiff, Farmer's Union Central Exchange, Inc., is the lessee of oil and gas leases issued by lessor, State of Montana, covering lands within the Coal Creek State Forest, and more particularly described in Exhibit "B" attached hereto and by reference

incorporated herein.

4. Plaintiff, Sun Exploration and Production Company, is the lessee of oil and gas leases issued by lessor, State of Montana, covering lands within the Coal Creek State Forest, and more particularly described in Exhibit "C" attached hereto and by reference incorporated herein.

5. Plaintiff, Conquest Exploration Company, is the lessee of oil and gas leases issued by lessor, State of Montana, covering lands within the Coal Creek State Forest, and more particularly described in Exhibit "D" attached hereto and by reference incorporated herein.

6. Plaintiff, Hunt Oil Company, is the lessee of an oil and gas lease issued by lessor, State of Montana, covering lands within the Coal Creek State Forest, and more particularly described as all of Section 27, Township 34 North, Range 21 West, M.P.M. containing 640 acres, more or less, also known as State Lease No. 26, 714-83.

7. Defendant, United States of America, pursuant to 28 U.S.C. §2409a(a) has consented to be sued in civil actions to adjudicate disputes regarding title to real property in which the United States claims an interest.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1346(f).

9. Plaintiff, State of Montana, acquired fee simple title to the property described above; the Coal Creek State Forest, by selecting the lands to fulfill its grants in quantity under the Enabling Act of February 22, 1889, 25 Stat. 676. These selections were approved by the United States Secretary of the Interior in five clear lists.

which is the equivalent of issuing to the State a patent to the land.

10. Plaintiff, State of Montana, is informed and believes that the interest claimed by the United States in the Coal Creek State Forest arises from a void quit-claim deed dated June 5, 1899, supposedly issued by the State of Montana under the Forest Lieu Lands Act of June 4, 1897, 30 Stat. 11. This void quit-claim deed was filed in the lands records of the Clerk and Recorder of Flathead County, Montana on August 24, 1899, at Book 29 Deeds, Page 246.

11. Plaintiff, State of Montana, first learned of the existence of the claim of interest of the United States of America September 12, 1984 when it received notice from the United States Department of the Interior, Bureau of Land Management, which rejected the application of the Plaintiff, State of Montana, for a disclaimer of interest from the United States Secretary of the Interior. Prior to such time, Plaintiff's had no reason to know of the claim of interest of the United States in such property.

12. THe above-described claim of Defendant, United States of America, is without any right whatever, and Defendant United States has no right, title, or interest in the property described above.

Count II

Plaintiffs hereby adopt and incorporate by reference paragraphs 1 through 9 of Count I of this Complaint as paragraphs 1 through 9 of Count II of this Complaint, and further allege the following:

13. That agents of the United States of America have made

representations to the State of Montana which reasonably led agents of the State of Montana to believe that the United States of America asserted no claim to oil, gas, or other fungible hydrocarbons within the Coal Creek State Forest.

14. That the United States of America is estopped to assert any interest in the oil, gas, or other fungible hydrocarbons within the Coal Creek State Forest by reason that the United States of America should have reasonably expected that the representation of its agents would induce forbearance of a definite and substantial character on the part of the State of Montana.

15. That injustice can be avoided only by enforcement of the prior representations of the United States of America that it asserted no interest in land now within the Coal Creek State Forest.

WHEREFORE, Plaintiff, State of Montana, prays for judgment as follows:

1. That Defendant, United States of America, be required to set forth the nature of its claims to the real property described above in Exhibit "A" attached hereto, and by reference incorporated herein.
2. That this Court declare that the claims of Defendant, United States of America, to such real property are of no validity whatever.
3. That this Court declare that Plaintiff, State of Montana, is the rightful owner of all oil, gas, and other fungible hydrocarbons in such real property subject to the existing leases held by Farmer's Union Central Exchange, Inc., Sun Exploration and Production Company, Conquest Oil Company, and Hunt Oil Company more particularly described in Count I of this Complaint and by reference incorporated herein.

4. That Defendant, United States of America, has no right, title, or interest in lands described in Exhibit "A", "B", "C", or "D" attached hereto and by reference incorporated herein.

5. For costs of this action, a reasonable attorney's fee, and such other and further relief as the Court deems proper.

DATED this 27th day of June, 1986.

John F. North, Lyle Manley, and
Tommy H. Butler, Attorneys for
Montana Department of State Lands

By: Tommy H. Butler
Tommy H. Butler
Special Assistant Attorney General
1625 Eleventh Avenue
Helena, Montana 59601
(406) 444-2074

By: Corinne Courtney
Corinne Courtney, Attorney for
Farmer's Union Central Exchange, Inc.,
Sun Exploration and Production Company,
Conquest Oil Company
P.O. Box 21479
Billings, MT 59104

By:
James J. Johnson, Attorney for Hunt Oil Co.
2900 InterFirst One Building
1401 Elm Street
Dallas, TX 75202

BYRON H. DUNBAR
United States Attorney

KRIS A. McLEAN
Assistant U. S. Attorney
167 Federal Building
Butte, Montana 59701
Telephone: (406) 723-6611

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation,

Plaintiffs,

vs. : CV 86-141-M-CCL

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED ANSWER

COMES NOW the defendant, United States of America, by and through Kris A. McLean, Assistant U. S. Attorney for the District of Montana, and for its amended answer to the complaint on file herein, admits, denies, and alleges as follows:

I.

Admits the allegations of paragraphs 7, 8 and the first sentence in paragraph 9 of plaintiff's complaint.

II.

Denies the allegations contained in paragraph 2, denies the allegations of the second sentence in paragraph 9 and all of paragraph 10 in that the United States does not claim an interest in the subject lands through the June 5, 1899, deed, but rather through State Patent E 851. Denies the second sentence in paragraph 11, all of paragraphs 12, 13 and 14. Plaintiff is stating a conclusion of law in paragraph 15.

III.

Answering the allegations of paragraphs 1, 3, 4, 5, 6 and the first sentence in paragraph 11 of plaintiff's complaint, this answering defendant alleges it does not have sufficient information upon which to form a belief as to said allegations and therefore denies the same.

AFFIRMATIVE DEFENSE

This Court lacks jurisdiction because plaintiff has failed to exhaust its administrative remedies as found at 43 C.F.R. 1864.

WHEREFORE having fully answered, the defendant, United States of America, prays the complaint be dismissed as to it.

BYRON H. DUNBAR
United States Attorney

KRIS A. McLEAN
Assistant U. S. Attorney

(109) 36-630

Tommy H. Butler
Special Assistant Attorney General
1625 Eleventh Avenue
Helena, MT 59620
(406) 444-2074
Attorney for Plaintiff, State of Montana

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * * * * * * * * * *

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation,

Plaintiffs,

-vs-

THE UNITED STATES OF AMERICA,

Defendant.

Cause No. CV 86-141-M-CCL

STATE'S MOTION FOR
STIPULATED JUDGMENT

Plaintiff, State of Montana, hereby moves the Court to issue its JUDGMENT in the above-captioned matter in accordance with the parties' STIPULATION AND REQUEST FOR DISMISSAL WITH PREJUDICE dated November 28, 1986.

Counsel for the United States of America has been contacted concerning this motion and does not object to the granting of this motion.

This motion is supported by the ~~affidavit of Tommy H. Butler, the~~ parties' STIPULATION AND REQUEST FOR DISMISSAL WITH PREJUDICE dated November 28, 1986, and the STATE'S BRIEF IN SUPPORT OF MOTION FOR STIPULATED JUDGMENT.

DATED this 10th day of December, 1986.

Lyle Manley, Tommy H. Butler and
Richard R. Thweatt, attorneys for
the Montana Department of State Lands

By: Tommy H Butler
Tommy H. Butler
Special Assistant Attorney General

Tommy W. Butler
Special Assistant Attorney General
1625 Eleventh Avenue
Helena, MT 59620
(406) 444-2074
Attorney for Plaintiff, State of Montana

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION
* * * * * * * * * * *

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation,

Plaintiffs,

-vs-

THE UNITED STATES OF AMERICA,

Defendant.

Cause No. CV 86-141-M-CCL

AFFIDAVIT OF

TOMMY W. BUTLER

Tommy W. Butler, having first been duly sworn, deposes and says:

1. He is a Special Assistant Attorney General representing the State of Montana in the above-captioned litigation;
2. That on Wednesday, October 8, 1986 he met with Kris A. McLean, an Assistant U.S. Attorney representing the United States of America in the above-captioned litigation;
3. That on October 8, 1986, counsel for the State of Montana and counsel for the United States of America effected a stipulated settlement of the above-captioned litigation;
4. That the above-described stipulated settlement was reduced to written expression by the parties' STIPULATION AND REQUEST FOR DISMISSAL WITH PREJUDICE dated November 28, 1986, a true and correct copy of which is attached hereto as exhibit "A".
5. That the parties' STIPULATION AND REQUEST FOR DISMISSAL WITH PREJUDICE has been executed by all counsel of record in the above-captioned

litigation;

6. That the State of Montana now wishes to record a judgment in accordance with the above-described stipulation so as to clear its title to certain real property; and

7. That he has spoken to Counsel for the United States of America and determined that the U.S.A. has no objection to this motion.

Further, your affiant sayeth not.

DATED this 10th day of December, 1986.

Tommy H. Butler

SUBSCRIBED AND SWORN TO before me this 10 day of December, 1986.

Lee L. Smith
Notary Public for the State of Montana.
Residing at Helena Mt.
My commission expires June 3, 1989.

BYRON H. DUNBAR
United States Attorney

KRIS A. McLEAN
Assistant U. S. Attorney
167 Federal Building
Butte, Montana 59701
Telephone: (406) 723-6611

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation,

Plaintiffs,

-vs.

CV 86-141-M-CCL

THE UNITED STATES OF AMERICA,

Defendant.

STIPULATION AND REQUEST FOR DISMISSAL WITH PREJUDICE

The Plaintiffs, State of Montana; Farmer's Union Central Exchange, Inc., a Minnesota Corporation; Conquest Exploration Company, a Delaware Corporation; Hunt Oil Company, a Delaware Corporation; Sun Exploration and Production Company, a Delaware Corporation, and the Defendant, the United States of America, agree and stipulate as follows:

1. That the Defendant, the United States of America, has no right, title, or interest in or to the following-described lands and the United States hereby disclaims any interest therein:

Township 34 North, Range 21 West, P.M.M.

Section 1: Lot 6
Section 2: Lots, 2, 3, 6, 9, 12, 13 and 15
Section 3: Lots 2, 3, 4, SW1/4NE1/4, S1/2NW1/4, S1/2
Section 4: Lots 1, 2, S1/2NE1/4
Section 10: All
Section 11: Lots 1, 2, 3, 4, 5, 6, 7, 8, NE1/4NE1/4, S1/2SE1/4, SW1/4, S1/2NW1/4, NW1/4NW1/4
Section 12: Lots 3, 4, 9, 10, 11, 13, SW1/4SW1/4
Section 14: All
Section 15: Lots 1, 2, 3, 4, E1/2, N1/2NW1/4, SE1/4NW1/4, NE1/4SW1/4
Section 16: Lots 1, 2, W1/2SE1/4, SW1/4
Section 18: Lots 1, 2, E1/2SW1/4
Section 19: Lots 1, 2, 3, 4, E1/2, E1/2W1/2
Section 20: S1/2
Section 21: Lot 1, SE1/4, S1/2NE1/4, NW1/4NE1/4
Section 22: All
Section 23: All
Section 24: SW1/4, W1/2NW1/4, S1/2SE1/4
Section 25: All
Section 26: All

Section 27: All

Section 28: All

Section 29: All

Section 30: All

Section 31: All

Section 32: All

Section 33: All

Section 34: All

Section 35: All

Section 36: All

Township 35 North, Range 21 West, P.M.M.

Section 16: Lots 2, 3, 6, 7, 10, 11, SW1/4, but excluding those portions of lots 7, 10, and 11 of Section 16, Township 35 North, Range 21 West, P.M.M. in conflict with lot 16 of Section 16, Township 35 North, Range 21 West, P.M.M. as described in the official dependent resurvey plat approved on March 24, 1983, on record in the Bureau of Land Management Office in Billings, Montana.

Township 34 North, Range 20 West, P.M.M.

Section 30: Lots 3, 4, 6, 7, S1/2SE1/4, NW1/4SE1/4, E1/2SW1/4, SE1/4NW1/4

2. The parties request that the above-captioned matter be dismissed with prejudice.

DATED this 29th day of November, 1986.

* *

BYRON H. DUNBAR
United States Attorney

By: K. A. McLean
KRIS A. McLEAN
Assistant U. S. Attorney

LYLE MANLEY, TOMMY BUTLER, and
RICHARD R. TEWEATT, Attorneys for
the Montana Department of State Lands

By: Tommy H. Butler
TOMMY H. BUTLER
Special Assistant Attorney General
1625 Eleventh Avenue
Helena, Montana 59620
(406) 444-2074

By: Corinne Courtney
CORRINE COURTNEY, Attorney for
Farmer's Union Central Exchange,
Inc.; Sun Exploration & Production
Company; Conquest Oil Company
P. O. Box 21479
Billings, Montana 59104

By: James J. Johnson
JAMES J. JOHNSON, Attorney for
Hunt Oil Company
2900 InterFirst One Building
1401 Elm Street
Dallas, Texas 75202

Tommy H. Butler
Special Assistant Attorney General
1625 Eleventh Avenue
Helena, MT 59620
(406) 444-2074
Attorney for Plaintiff, State of Montana

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * * * * * * * * * *

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a Minnesota Corporation; CONQUEST EXPLORATION COMPANY, a Delaware Corporation; HUNT OIL COMPANY, a Delaware Corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware Corporation, Plaintiffs, -vs- THE UNITED STATES OF AMERICA, Defendant.	Cause No. CV 86-141-M-CCL STATE'S BRIEF IN SUPPORT OF MOTION FOR STIPULATED JUDGMENT

Introduction

This action by the Plaintiff, State of Montana, and it's oil and gas lessees, was an attempt to clear the State's title to certain land in Flathead County, Montana. Defendant, United States of America now stipulates that it has no interest in these lands. The state now wishes to record a curative document to clear the state's title to the lands in question. Moreover, the state wishes to dismiss its action against the United States of America.

Discussion

Section 7-4-2613, MCA, lists the kinds of documents that are allowed to be recorded in the office of a County Clerk and Recorder in the State of Montana. It does not appear that stipulations between parties in litigation are recordable. However, section 7-4-2613(1), MCA, allows ". . . certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county . . ." to be recorded.

Consequently, Plaintiff, State of Montana, respectfully requests this Court to take notice of the parties' STIPULATION AND REQUEST FOR DISMISSAL dated November 28, 1986 and issue a decree or judgment in accordance with the provisions of that stipulation.

Respectfully submitted this 10th day of December, 1986.

Lyle Manley, Tommy Butler and
Richard Thweatt, attorneys for the
Montana Department of State Lands

By: Tommy H. Butler
Tommy H. Butler
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing BRIEF IN SUPPORT OF STATE'S MOTION FOR STIPULATED JUDGMENT was served upon the following attorneys of record by mailing a true and correct copy thereof on the 10th day of December, 1986, postage prepaid and addressed to:

Kris A. McLean
Assistant U.S. Attorney
167 Federal Building
Butte, Montana 59701
Attorney for Defendant U.S.A.

Corrine Courtney
P. O. Box 21479
Billings, Montana 59104
Attorney for Farmer's Union
Central Exchange, Inc.; Sun Exploration
& Production Co.; and Conquest Oil Co.

James J. Johnson
Hunt Oil Company
2900 Interfirst One Building
1401 Elm Street
Dallas, Texas 75202

Tommy H. Butler
Tommy H. Butler

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

FILED

DEC 10 1986

[illegible] Clerk

By GAYLE A. [illegible]
Deputy Clerk

****

THE STATE OF MONTANA; FARMER'S UNION CENTRAL EXCHANGE, INC., a a Minnesota corporation; CONQUEST EXPLORATION COMPANY, a Delaware corporation; HUNT OIL COMPANY, a Delaware corporation; and SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware corporation,

Plaintiffs,

-v-

THE UNITED STATES OF AMERICA,

Defendant.

CV 86-141-M-CCL

ORDER

****

Plaintiff, The State of Montana, having moved for entry of judgment dismissing the above-entitled matter with prejudice, and counsel for all parties having signed a stipulation and request for dismissal with prejudice,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the State's motion is GRANTED and, pursuant to the aforementioned stipulation, that the United States has no right, title, or interest in or to the following described lands:

Township 34 North, Range 21 West, P.M.M.

Section 1:	Lot 6
Section 2:	Lots 2, 3, 6, 9, 12, 13 and 15
Section 3:	Lots 2, 3, 4, SW1/4NE1/4, S1/2NW1/4, S1/2
Section 4:	Lots 1, 2, S1/2NE1/4
Section 10:	All
Section 11:	Lots 1, 2, 3, 4, 5, 6, 7, 8, NE1/4NE1/4, S1/2SE1/4, SW1/4, S1/2NW1/4, NW1/4NW1/4

Section 12: Lots 3, 4, 9, 10, 11, 13, SW1/4SW1/4
Section 14: All
Section 15: Lots 1, 2, 3, 4, E1/2, N1/2NW1/4, SE1/4NW1/4, NE1/4SW1/4
Section 16: Lots 1, 2, W1/2SE1/4, SW1/4
Section 18: Lots 1, 2, E1/2SW1/4
Section 19: Lots 1, 2, 3, 4, E1/2, E1/2W1/2
Section 20: S1/2
Section 21: Lot 1, SE1/4, S1/2NE1/4, NW1/4NE1/4
Section 22: All
Section 23: All
Section 24: SW1/4, W1/2NW1/4, S1/2SE1/4
Section 25: All
Section 26: All
Section 27: All
Section 28: All
Section 29: All
Section 30: All
Section 31: All
Section 32: All
Section 33: All
Section 34: All
Section 35: All
Section 36: All

Township 35 North, Range 21 West, P.M.M.

Section 16: Lots 2, 3, 6, 7, 10, 11, SW1/4, but excluding those portions of lots 7, 10, and 11 of Section 16, Township 35 North, Range 21, West, P.M.M. in conflict with lot 16 of Section 16, Township 35 North, Range 21 West, P.M.M. as described in the official dependent resurvey plat approved on March 24, 1983, on record in the Bureau of Land Management Office in Billings, Montana.

Township 34 North, Range 20 West, P.M.M.

Section 30: Lots 3, 4, 6, 7, S1/2SE1/4, NW1/4SE1/4, E1/2SW1/4, SE1/4NW1/4

The clerk is directed to enter judgment in accordance herewith.

Done and dated this 4 day of December, 1986.

CHARLES C. LOVELL
United States District Judge

THE LIBRARY OF CONGRESS
Congressional Research Service

WASHINGTON, D.C. 20540

Attachment E

May 30, 1974

To: Honorable B. F. Sisk
Attention: Mr. Adams

From: American Law Division

Subject: Requested Opinion Respecting the Constitutionality of the Sisk Act's Section 4 Which Confirms Title in the United States to Certain Lands Relinquished and Located Within National Forests

This will respond to your request for an opinion respecting the constitutionality of Section 4 of the Sisk Act (Public Law 86-596, 76 Stat. 334). As per our telephone conversations, it is our understanding that your concern regarding Section 4's constitutionality arises from the "just compensation" requirement of U.S. Const. Amend. 5 which guarantees "that private property shall not be taken for a public use without just compensation," and it is to this concern that this memorandum is addressed.

Section 4 of the Sisk Act was enacted for the purpose, and has the effect, of confirming the legal and equitable title of the United States in and to lands which provided the basis for the "in-lieu selections authorized by the Act of June 4, 1897 (30 Stat. 11, 36)."

The 1897 act provided that—

> in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent * * *.

This act was amended by the acts of June 6, 1900 (30 Stat. 588, 641), and March 3, 1901 (31 Stat. 1010, 1037), to limit the permissible lieu selections to—

> vacant surveyed nonmineral public lands which are subject to homestead entry

and was repealed by the act of March 3, 1905 (33 Stat. 1264). The last-named act saved, however—

> the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act.

and provided, further, that—

> selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

None of these acts contained any provision for reconveyance of the relinquished lands and the 1905 act, as is evident, treated the conveyor's rights as contractual rather than proprietary in nature. It was not until the act of September 22, 1922 (42 Stat. 1017), became law that there was authority for the Secretary of the Interior to make a reconveyance and this was limited to applications for reconveyance made before September 22, 1927. The 1930 act, which covers a large variety of situations, reopened the possibility of reconveyances. There is nothing in the history of the bill that became this act to indicate any awareness of its effect upon or applicability to the old forest lieu selections problem.

In view of the earlier legislation, the 1922 and 1930 acts must, at least so far as reconveyances are concerned, be regarded as acts of grace on the part of Congress which vested no permanent or irrevocable right to a reconveyance in their beneficiaries. Enactment of H.R. 9142 will thus, in effect, restore the legal situation to what it was before these acts became law except as to lands which have been returned to private ownership in the meantime.

— equitable int.
selection [illegible]
Roughton v [illegible]

(S. Report No. 1639, 86th Cong., 2nd Sess.)

In some judicial decisions and in numerous Land Decisions of the Department of the Interior, the legal situation prior to the 1922 and 1930 Acts was, in effect, that until there had been an acceptance of the base lands by the Secretary of the Interior and an acceptable selection of lieu lands, legal and equitable title to the relinquished lands could not vest in the United States (See: Memorandum from Frank C. Lerrigo, Esquire to the Honorable B. F. Sisk (undated); and Memorandum from Lester J. Gendron, Esquire to the Honorable B. F. Sisk, January 29, 1970). Accordingly, the ultimate effect of the Sisk Act appears to be a substitution of compensation for the selection and reconveyance rights conferred by prior statutes and a cut-off of unexercised rights to compensation one year after the Act's effective date thereby completing the requirements of the judicial and quasi-judicial decisions respecting the vesting of legal and equitable title in the relinquished lands to the United States. This confirmation of title in and to all lands with respect to which there were outstanding lieu selection rights under the 1897 Act is criticized as violating the Fifth Amendment guarantee "that private property shall not be taken for a public use without just compensation"; and the basis of the criticism is the Act's settlement of "$1.25 per acre" as the "just compensation" for the property taken.

In this latter regard, "$1.25 per acre" is alleged to have been the value of the relinquished base lands as of the date of their taking (i.e. this was, presumably, during the period of 1897-1905 when in-lieu selection rights were provided for and cut-off with respect to land relinquishments under the 1897 Act). See: S. Rept. No. 1639, 86th Cong., 2nd Sess. This finding was an apparent attempt to conform with the general rule reaffirmed in U.S. v. Dow, 357 U.S. 17 (1958) (and developed in the earlier cases cited therein) wherein the Court held that "... the passage of title does not necessarily determine the date of 'taking.' The usual rule is that if the United States has entered into possession of the property prior to the acquisition of title, it is the former event which constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the Government's obligation to pay interest accrues."

In determining the apparent date of taking and fixing the value of the property taken as of that date, the legislature—in enacting the Sisk Act--"has undertaken to do what a jury of the country only could constitutionally do; assess the amount of compensation to which the complainants are entitled. Here, then, is a law which not only takes away the property of the complainants, but provides, to some extent, for their indemnity. Whether the complainants have availed themselves of this provision or not, does not appear, nor is it very material. The law in this respect does not bind them; and they are entitled to an adequate compensation for the property taken." (Charles River Bridge v. Warren Bridge, 36 U.S. 420, 571 (1837)).

Additionally, By this legislation, Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial and not a legislative question. The legislature may determine what private property is needed for public purposes — that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property, through Congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry. In *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 571, Mr. Justice McLean in his opinion, referring to a provision for compensation found in the charter of the Warren bridge, uses this language: "They [the legislature] provide that the new company shall pay annually to the college, in behalf of the old one, one hundred pounds. By this provision, it appears that the legislature has undertaken to do what a jury of the country only could constitutionally do: assess the amount of compensation to which the complainants are entitled." See also the following authorities: *Commonwealth v. Pittsburgh & Connellsville Railroad*, 58 Penn. St. 26, 50; *Penn. Railroad v. Balt. & Ohio Railroad*, 60 Maryland, 263; *Isom v. Mississippi Central Railroad*, 36 Mississippi, 300.

In the last of these cases, and on page 315, will be found these observations of the court: "The right of the legislature of the State, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge in its own case, to determine what is the 'just compensation' it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking his property without his consent, or to extinguish any part of such 'compensation' by prospective conjectural advantage, or *in any manner* to interfere with the just powers and province of courts and juries in administering right and justice, cannot for a moment be admitted or tolerated under our Constitution. If anything *can be* clear and undeniable, upon principles of natural justice or constitutional law, it seems that this must be so."

(Monongahela Navigation Co. v. U.S., 148 U.S. 312, 327-328 (1893)

Since it is the stated purpose of the Sisk Act, among other things, "to provide compensation for land conveyed or relinquished to the United States during the years 1897-1905 under the Act of June 4, 1897 (30 Stat. 11, 36), in cases in which the lieu lands or other rights which the owners were entitled to receive under this 1897 Act and supplementary legislation have not already been given to them ...," and to pay the price of $1.25 per acre which "was the going price of ? public lands generally at the time the base lands were relinquished" (S. Rept. No. 1639, 86th Cong., 2nd Sess.), and it further being clear that, pursuant to the controlling decisions, title to these lands could not have vested in the United States until such time as in-lieu selections were made and approved by the United States, it would appear that in extinguishing all in-lieu selection rights upon the expiration of one year from the date of its enactment, the Sisk Act's primary effect is the expropriation of property at a price determined by the legislature. While this expropriation or taking of the property does not appear to be without the power of Congress, nevertheless, as it is so forcefully stated by the Supreme Court in the *Charles River Bridge* and *Monongahela Navigation Co.* decisions above, the question of the measure of compensation is, in all cases involving a taking of property under the authority of the Fifth Amendment, a judicial and not a legislative one. Accordingly, inasmuch as the Sisk Act, at Sections 1 and 4 authorize a taking of property at a legislatively determined measure of damages, it would seem to follow that the Act may not survive a constitutional challenge under the Fifth Amendment's "just compensation" requirement. This conclusion, of course, assumes that existing "in-lieu selections" 7 issued under the 1897 Act constitute valid claims against the Federal Government.

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Attachment F

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OUR FILE NO.
816.00

June 1, 1990

VIA FAX AND FEDERAL EXPRESS

The Honorable Bruce F. Vento
Chairman, Subcommittee on National
  Parks and Public Lands
Rayburn House Office Building
Washington D.C. 20515-2304

Re: H.R. 4429 (Lagomarsino)

Dear Chairman Vento:

The grief, misery and expense caused by one letter written by the Forest Service in 1976 eloquently demonstrates the need to enact H.R. 4429. A Forest Service's letter dated September 17, 1976, addressed to the late Ralph L. Smith of Bakersfield, California, asserted that 80 acres owned by Mr. Smith and two other families since 1943, commonly known as "Soda Flat," was "federal lands" because it had once been offered by C. E. Glover as a basis of an exchange under the Act of June 4, 1897. The Forest Service claimed that Glover's relinquishment deed conveyed absolute title to the United States which title was "confirmed" by the Act of July 6, 1960, the so-called "Sisk Act." The letter concluded by claiming that the land had been "administered" as a part of the Sequoia National Forest since 1900 and that the Government "will continue administering these lands for National Forest purposes."

Mr. Smith brought this letter to me, then a young and inexperienced lawyer. Mr. Smith could not understand how the Forest Service could have been "administering" his property which had been improved with a log cabin since 1919, taxed as private property by Tulare County and shown as private property in Forest Service land records and maps. I asked Mr. Smith why he brought this letter to me since I knew nothing of federal land law. Mr. Smith replied that he was in more need of a young lawyer than an experienced one, since he figured that neither he nor an experienced lawyer would live long enough to see the matter through.

After Mr. Smith left me with the Forest Service's letter, I obtained a copy of Glover's 1900 deed referred to in the letter, a chain of title guarantee on the property, and a certified copy of Glover's lieu selection file from the National Archives. What I found out was this: Glover obtained a school lands patent to Soda Flat from the State of California in 1900 and then applied under the Act of June 4, 1897 to exchange Soda Flat for a like quantity of federal land in Northern California. Glover's deed was conditioned upon the exchange being completed. It expressly stated Glover's "desire to relinquish to the United States and select in lieu thereof an equal quantity of vacant land open to settlement, as provided by the Act of Congress of June 4, 1897 (30 Stat. 36)." Glover recorded the deed before the exchange was approved because government regulations required it. The first set of regulations adopted by the Secretary to implement the 1897 Act (24 L.D. 589, 592-593 (1897); hereafter the "1897 regulations") required the applicant to file with the local land office in which the lieu parcel was located a relinquishment deed to the base land, previously recorded on the county records, an abstract of title thereto, and an application describing the tract selected in lieu thereof.[1] (Ibid., ¶¶ 15 and 16: "The application must describe the tract selected . . . and must be accompanied by a formal relinquishment to the United States of all right, title and interest in and to the tract embraced in said entry.") All applications ". . . must be forwarded by local offices to the Commissioner of the General Land Office for consideration . . . ." (Ibid., ¶ 18.)

A printed form of application was issued by the General Land Office ("GLO") as early as April 1898 (Kern Oil Company v. Clarke (1901) 30 L.D. 550, 568) and was formally approved by the Commissioner thereafter (Letter to Registers and Receivers dated May 9, 1899, 28 L.D. 521, 524). We set forth this Form 4-643 at length because its wording indicates without doubt the conditional nature of the applicant's tender of his relinquishment deed and GLO's requirement that the applicant tie his base land to a like area of specifically described lieu land:

"SELECTION IN LIEU OF LAND IN FOREST RESERVE

(Act of June 4, 1897.)

To the REGISTER AND RECEIVER,

United States Land Office,

GENTLEMEN: I am the owner of the ________
______________________________ Meridian, containing
__________ acres; that said land is situate and lying

---

[1] It remains the federal government's practice to this day to require a private landowner, desirous of selling or exchanging his land to the United States, to tender a recorded deed and a policy of title insurance to designated officers in Washington D.C. to whom power has been delegated to either accept or reject the tender. (Standards For The Preparation of Title Evidence in Land Acquisitions By The United States, (1970) Department of Justice, Land and Natural Resources Division.)

> within the boundaries of the ____________ Forest Reserve; that *I desire to relinquish and reconvey* said land unto the United States, *and in lieu thereof to select* the ______________________________________ land district, State of ________________, and containing ______ acres, under the provisions of the Act of June 4, 1897 (30 Stat., 36).
>
> In compliance with the regulations under said act I have made, executed, and caused to be recorded in the proper county and State, a deed of reconveyance to the United States of the tract first above described and situate within said ______________ Forest Reserve, and in relation thereto have caused a proper abstract of title to be made and authenticated, both of which are herewith submitted.
>
> There are also submitted certificates from the proper officers showing that the land relinquished, or surrendered, is free from encumbrance of any kind; also that all taxes thereon, to the present time, have been paid; and an affidavit showing the lands selected to be non-mineral in character and unoccupied. *I therefore ask that United States patent issue to me for the tract or tracts thus selected*.
>
> ________________________
>
> Dated, ________________."
>
> (Emphasis added.)

Glover's application was on this form.

From the outset, land speculators contended that the filing of a relinquishment deed created in the applicant a species of vested property right in the public domain, commonly referred to as "floating script," which could be assigned freely and separately from the base land and which could be exercised at any time by the filing of a lieu selection application. (*George L. Ramsey by Ted E. Collins* (1943) 58 L.D. 272, 294.) The Secretary rejected this notion. (*Ibid*; *F. A Hyde (On Review)* (1898) 29 L.D. 284, 286: "The officers of the land department are not authorized to accept, consider or pass upon a relinquishment . . ., *except in connection with a proffered or tendered selection of other lands in lieu thereof*" (emphasis added); *William S. Tevis* (1900) 29 L.D. 575, 577; see, also, *Kern County Company* v. *Clarke*, *supra*, 30 L.D. 550, 554, 556 and *Udall* v. *Battle Mountain Company* (9th Cir. 1967) 385 F.2d 90, 93-94, in which this court reviewed the Secretary's consistent policy against recognizing floating script rights.)

On March 6, 1900, Secretary Hitchcock instructed the Commissioner that local officers should not allow any relinquishments to be filed unless accompanied by a lieu selection application for a like quality of land. (29 L.D. 578.) In 1902, Commissioner Hermann issued a detailed set of 1897 Act regulations, approved by Secretary Hitchcock, which required Form 4-643 or its equivalent to be used. (31 L.D. 372, 375, ¶ 22.) As in the 1897 regulations, all the paperwork had to be filed at the same time (Id at 374, ¶ 18) and thereafter sent by the local office to the Commissioner for decision (Id. at 376, ¶ 26). The Commissioner further cautioned that ". . . [t]he action of the Register and Receiver in receiving a selection . . . will not in itself operate to confer any right upon the selector such as to prevent the subsequent rejection of the selection . . .." (Ibid.)

Frustrated by the Secretary's insistence that no equitable rights in lieu parcels vested in the applicant upon local filing, land speculators attacked the Secretary's 1897 regulations in Cosmos Exploration Company v. Gray Eagle Oil Company (1903) 190 U.S. 301, 23 S.Ct. 692, 47 L.Ed. 1064. In that case, Clarke, a member of the Hyde Fraud Combine, had tendered a relinquishment deed and filed an application to select certain lands which the defendants in protests filed with the local land office asserted were valuable oil lands and thus not open for selection. Clarke contended that equitable title to the lieu lands had passed to him immediately upon local filing of his application and relinquishment deed. The Court first reviewed the 1897 regulations, especially the requirement that all the paperwork be sent to the Commissioner for decision, and found the regulations reasonable. (190 U.S. at 309-310, 23 S.Ct. at 696, 47 L.Ed. at 1070.) The Court then rejected Clarke's vesting theory, holding:

> "There must be a decision made somewhere regarding the rights asserted by the selector of land under the act, before a complete equitable title to the land can exist. The mere filing of papers cannot create such title. . . . [W]e must conclude that the action of the local officers did not, as it could not, amount to a decision upon the application of the selector, so that he became vested with the equitable title to the land he assumed to select." (190 U.S. 301, 309-313, 23 S.Ct. 692, 696-697, 47 L.Ed. 1064, 1070-1072.)

Over the next 40 years, the Secretary and the Commissioner repeatedly ruled that an applicant acquired no property rights in the lieu lands by merely tendering a relinquishment deed and making a lieu selection:

(a) Maybury v. Hazletine (1903) 32 L.D. 41: "Ayre's application not having been approved and his reconveyance . . . and abstract . . . not having been examined, it could not be known whether the title claimed to have been conveyed . . . would prove to be good. The act of June 4, 1897, proposes an exchange with 'the owner' of lands in a forest reserve. If . . . one supposing himself to be complete owner of land in a forest reserve makes a conveyance to the government of an imperfect title for which it is not authorized to give land in exchange, it would manifestly be improper for the government to make any disposal of such lands or to do or authorize to be done any act that would render it more difficult to restore to the grantor whatever title he had attempted to relinquish." (Id. at 42.)

(b) H. H. Goetjen (1903) 32 L.D. 209: "In receiving a reconveyance of land so granted the land department acts administratively to accept for the government a title tendered. If it is disclosed by the abstract, or in any other manner that adverse claims exist, the land department cannot try the question which claimant has the better title or right. Such a controversy must in some manner be terminated before a title from either claimant can be accepted as base . . . ." (Id. at 210-211.)

(c) C. W. Clarke (1903) 32 L.D. 233: ". . . [A]ll equitable right of property in the land relinquished remains in the proponent until the title is examined, approved and accepted by the land department." (Id. at 235.)

(d) Lafayette Lewis (1903) 33 L.D. 43: "A selection under the act of June 4, 1897 is essentially an exchange. Equitable title and right to the lands exchanged necessarily vest at the same time." (Id. at 44; emphasis added.)

(e) William E. Moses (1904) 33 L.D. 333: "Equitable title to land relinquished to the United States . . . does not vest until examination and acceptance of the title . . . ." ¶ It is a transaction of exchange and it is a necessary condition of title by exchange that there is 'concurrent vestiture

> of title' to the things exchanged." (Id. at 334; emphasis added.)

(f) George Austin (1905) 33 L.D. 589: "Relinquishment of lands and selection of others in lieu thereof . . . is essentially a contract of exchange. . . . [T]he relinquisher's acts by filing of papers are but a representation that he has title, and . . . some decision upon the validity of that title must be made . . . before equitable title vests." (Id. at 590.)

(g) W. E. Moses Land Scrip and Realty Company (1906) 34 L.D. 458:

> "No case is cited, and none has been found by the Department, where acceptance of a conveyance of title is presumed from mere filing of the conveyance of record by the grantor. If the grantee is bound to render an equivalent or consideration for the conveyance, it is manifest that to hold the grantee obligated to pay a consideration where he has not received the conveyance is unsound in principle as creating a contract which the grantee never actually considered or determined to enter into." (Id. at 460.)

(h) Acting Secretary E. C. Finney's letter dated May 26, 1921 to the Chairman of the House Committee on Public Lands:

> ". . . [N]o interest vested in applicants for lieu selections by virtue of their applications or in the Government under their [relinquishment] deeds, until the applications had been examined and approved. . . . [U]ntil so examined and approved the deeds had been merely tendered but there had been no delivery or acceptance as would pass title whatever." (House Doc., 67th Congress, 1st Sess., Report No. 410, p. 3; emphasis added.)

(i) Hiram M. Hamilton (1932) 54 L.D. 36:

> "It cannot be held that equitable title and right to the lands relinquished by Hamilton in 1902 passed to the United States by the spreading of his deeds upon the

> record. On the contrary, *it is clear that all equitable estate and title remained in the title proponent* . . . ." (*Id*. at 39; emphasis added.)

(j) *George L. Ramsey By Ted E. Collins*, *supra*, 58 L.D. 272:

> "As to this statute, a fundamental point to be noted is that according to a long line of decisions the act contemplated *an exchange between two owners* . . . .
>
> ". . . [I]t is the duty of the land department to ascertain and determine whether lands sought to be acquired under the act are the class and character thereby made subject to disposal." (*Id*. at 294, 297.)

The Secretary, as a necessary corollary, ruled that a relinquishment deed, despite its prior recordation, never became operative if the Commissioner canceled the lieu selection application. (*W. E. Moses Land Scrip and Realty Company*, *supra*, 34 L.D. 458, 460; *William E. Moses*, *supra*, 33 L.D. 333, 334-335.) In *William E. Moses*, the Secretary held:

> "The deed having been delivered to officers of the United States for their inspection and acceptance and being found not acceptable, *the United States has no claim to the land nor right to possession of the deed. The transaction, of which the conditional delivery was a part, having wholly failed, the deed never became operative, and the grantor is entitled to its return that the grantee may be divested of the presumptive evidence of ownership*. Devlin on Deeds, Sec. 271; Graves v. Dudley (20 N.Y., 77); Ford v. James (12 Abb., N.Y. App., 159); Freeland v. Charnley (80 Ind., 132).
>
> "The principle involved is no new doctrine. Where the relinquishment of an entry was made as part of the transaction of claim for reimbursement, it was held erroneous to deny reinstatement of the entry on the refusal of repayment, or to accept and enter the relinquishment of record. (J. Harvey Allen, November 3, 1903 (unreported). *The relinquishment of an entry made as part of a transaction of exchange under the act of June 4, 1897, is effective only when the*

> proposed exchange is allowed, and if prematurely entered of record, the entry must be reinstated. Mary Stanton (32 L.D., 260). The controlling principle is that when such proposed transaction fails, the proponent must, as far as possible, be restored to the status quo of the time when the transaction originated.
>
> "Your office decision is reversed, and the original deed and abstract will be returned to the applicant. If necessary, in opinion of your office, to preservation of its records, copies may be made and retained." (33 L.D. 333, 334-335; emphasis added.)

In keeping with the Secretary's decision in William E. Moses to restore the applicant as much as possible to the status quo (see also Maybury v. Hazletine, supra, 32 L.D. 41, 42) and mindful of the apparent cloud on land titles cast by previously recorded relinquishment deeds (Mary E. Coffin (1901) 31 L.D. 175, 177), the GLO, when requested, routinely issued disclaimer letters reciting typically that since the lieu selection has been canceled, the government claimed no right, title or interest in the base. An example of a typical disclaimer letter is set forth in California Door Company (1929) 52 L.D. 644, 645.[1] The Commissioner intended for these disclaimer letters to be recorded in local land records to assist the landowner in removing any potential cloud on title created by the earlier recordation of the relinquishment deed. (Acting Secretary E. C. Finney's letter dated May 26, 1920 to the Chairman of the House Committee on Public Lands, supra, House Doc., 67th Congress, 1st Sess., Report No. 410, p. 3.) Acting Secretary Finney explained the practice to the House Committee on Public Lands in 1921 as follows:

> "Under the provisions of the Act of June 4, 1897 . . ., owners of patented lands within forest reservations were authorized to relinquish them to the Government and to select vacant lands open to settlement in lieu thereof. In the administration of this provision of said act, it appears that persons seeking such an exchange were

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[1]. The Assistant Commissioner wrote: "The Government never having accepted the said deed, title did not pass from said Albitre who is still owner of the land, and the United States disclaims ownership or jurisdiction over the land. If this letter is placed of record in the county in which the land lies, it is believed that it will remove any cloud from the title caused by the attempted reconveyance of the land to the United States."

> required to present with their applications, properly executed and recorded, deeds relinquishing their lands to the Government. In a number of instances such applications were, for various reasons, rejected, and no exchanges made, while in other cases deeds were duly executed and recorded by persons who failed to secure such an exchange because proper applications therefor were not presented to the Land Department prior to the repeal of the Act of June 4, 1897, supra, by the Act of March 3, 1905 (33 Stat., 1264), which made no provision for relief in such cases. As result both classes of persons were embarrassed by the fact that the appearance of such deeds in the local records of the counties in which their lands were located cast an apparent cloud upon their title. In order to relieve the situation as far as it was possible in the absence of statute, the General Land Office has in a number of cases entered upon its records renunciations of title and declarations of pertinent facts and furnished copies thereof under seal in such form as would, in some States, perhaps entitle these copies to spread upon the deed records; but the effect of such a document, even once it recorded, has been frequently questioned." (67th Congress, 1st Sess., Report No. 410 (1921), p. 3.)

Suspecting that Glover was employed by Hyde and Clarke, the Commissioner of the General Land Office by decision dated November 10, 1915 ruled that her state patent was invalid, rejected Glover's lieu selection and canceled her application. Glover then sold Soda Flat to the McCloud Lumber Company whom the Commissioner advised by letter dated May 10, 1919 that the ". . . United States by such cancellation refused to accept title to said base lands and does not claim any right, title or interest to said lands above described." This letter was recorded in the Tulare County Official Records on October 15, 1919.

My research further indicated that numerous federal courts, including the United States Supreme Court, followed the Secretary's decisions holding that a tender of a recorded relinquishment deed under the 1897 Act was a conditional offer of exchange which passed no title in favor of the United States. (Roughton v. Knight, supra, 219 U.S. 537, 544-548, 31 S.Ct. 297, 298-299, 55 L.Ed. 326, 327; Cosmos Exploration Company v. Gray Eagle Oil Company, supra, 190 U.S. 301, 312-313, 23 S.Ct. 692, 697, 47 L.Ed. 1064, 1072, explained in Daniels v. Wagner (1915) 237 U.S. 547, 35 S.Ct. 740, 59 L.Ed. 1102; Udall v. Battle Mountain Company, supra, 385 F.2d 90, 94; Daniels v. Wagner (9th

Cir. 1913) 205 F. 235, 237-238, revd. on other grounds (1915) 237 U.S. 547, 35 S.Ct. 740, 59 L.Ed. 1102; Peale v. Davis (D.C. cir. 1927) 19 F.2d 695, 696-697; United States v. McClure (C.C.D. Ore. 1909) 174 F. 510, 511-512; Clearwater Timber Co. v. Shoshone County, Idaho (C.C.D. Id. 1909) 155 F. 612, 620-626.) The Supreme Courts of Oregon, California and Montana, states containing thousands of acres of rejected base lands, have followed suit. (Roughton v. Knight (1909) 156 Cal. 123, 125-127; State v. Hyde (1918) 88 Ore. 1, 169 P. 757, 762; Pacific Livestock Co. v. Isaacs (1908) 52 Ore. 54, 96 P. 460, 464; Johnson v. Lincoln County (1915) 50 Mont. 257, 146 P. 471, 473; but see, contra, Territory ex rel. Devine v. Perrin (1905 Ariz.) 83 P. 361, yet, disapproval was viewed as divesting title, id. at 362.) Two intermediate California appellate courts, the Third and Fifth Appellate Districts, have similarly held that no title could pass to tendered base land until the lieu selection application was approved. (Newman v. Cornelius, supra, 3 Cal.App.3d 279, 292; Rosenberg v. C. W. Clarke Co. (1962) 200 Cal.App.2d 178, 181; Downer v. Grizzly Livestock & Land Co. (1935) 6 Cal.App.2d 39, 42-43.)

Armed with the law and naively believing that the Forest Service had made an innocent mistake, we prepared an application (CA 4283) under section 315 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2744; 43 U.S.C. 1745) for a recordable document of disclaimer with respect to Soda Flat. The application was filed on March 29, 1977 but the Bureau of Land Management refused to act on the application, allegedly because the Secretary of Interior had not promulgated regulations to implement section 315 of FLMPA. Nearly five years later in September 1982, after intervention by Congressman Bill Thomas, the State Office of the BLM agreed to rule on Soda Flat's application. We submitted to the BLM the legal authorities set forth above. The California State Office advised the Forest Service of the filing of the application by letter dated July 23, 1981. In this letter, the BLM proposed to record the prior disclaimer letter since the United States had canceled Glover's exchange application on November 10, 1915 and did not claim any right, title or interest in Soda Flat. The Forest Service vehemently opposed the State Office's intended course of action on grounds that "recordation of the disclaimer would impart constructive notice of its existence and the United States could conceivably be estopped from asserting title to the land." Neither agency, apparently, was aware that the disclaimer letter had been recorded in 1919! By Instruction Memorandum dated November 18, 1982, the Acting Associate Director of the BLM instructed all State Directors to deny all pending applications for disclaimers to base lands offered as the basis of exchange under the Act of June 4, 1897. Subsequently, the California State Office of the BLM denied Soda Flat's application on December 7, 1982.

Soda Flat Company next appealed the State Office's decision to the Interior Board of Land Appeals. Predictably, the

IBLA upheld the State Office's decision. (Soda Flat Co. Inc. (1983) 75 IBLA 388.) In its decision, the IBLA failed to discuss any of the authorities cited by Soda Flat Company. The IBLA held simply that Glover's relinquishment deed passed absolute title to the United States which was "quieted" by the Sisk Act.

Having spent nine years in vain trying to convince the Forest Service and Department of Interior to follow the prior decisions of the Secretary of Interior and the Supreme Court of the United States, Soda Flat had no alternative but to file suit against the United States on October 24, 1985 in Federal District Court for the Eastern District of California. In the three years of ensuing litigation, the United States steadfastly clung to the notion that Glover's deed worked an absolute conveyance of title and that the Commissioner of the General Land Office had no "authority" to disclaim any interest in Soda Flat after he canceled Glover's exchange application in 1915. The Government admitted that the Forest Service listed Soda Flat as private property on its land records and on its maps and had never laid claim to the property until its infamous letter dated September 17, 1976. The Government admitted that the property had been improved and taxed since at least 1919 and had never been "administered" as public land by the Forest Service. The Government nevertheless claimed that Soda Flat's action was barred by the 12 year statute of limitations governing quiet title acts under 28 U.S.C. § 2409a(g). The Government argued that Soda Flat Company "knew or should have known" of the Forest Service's claim of ownership since 1900 when Glover recorded her relinquishment deed.

After eleven years of defending its title against the claims of the Forest Service, and spending in excess of $65,000 in legal fees, on October 14, 1987, Soda Flat Company obtained judgment quieting its title against all claims of the United States. (Soda Flat Co. v. Hodel (E.D.Cal. 1987) 670 F.Supp. 879.) In its Findings of Fact and Conclusions of Law, the Court found that the action was timely commenced within the 12-year statute of limitations because Soda Flat Company and its shareholders had no reason to know that the United States Forest Service was secretly claiming ownership of Soda Flat until Ralph Smith received the Forest Service's letter dated September 17, 1976. The court further found that the exchange provisions of the Act of June 4, 1897 did not require the General Land Office to accept relinquishment deeds to base lands whose titles the General Land Office believed were imperfect. Accordingly, the claims of the United States to Soda Flat, based upon Glover's relinquishment deed and the Sisk Act, were invalid because the United States refused to accept title in 1915 and formally disclaimed any interest in Soda Flat in 1919. Unfortunately, Ralph Smith did not live to savor the victory. His dying wish, to leave Soda Flat to his grandchildren, however, did come true.

Throughout the Soda Flat case, the United States Government intentionally ignored 80 years of decisional law and asserted unfounded claims to privately owned property within a national forest. Unfortunately, the Soda Flat case is not an isolated instance. The Forest Service's September 17, 1976 letter to Ralph Smith was a form letter which by directive from Washington has been sent to other owners of base lands within national forests for which an exchange was never completed. The letter was intended to trigger the 12-year statute of limitations in hope that the landowners would not defend their title. Unfortunately, not all landowners have Soda Flat Company's determination and resources to defend their title. H.R. 4429 will force the Forest Service and the Bureau of Land Management to finally acknowledge that the Government has no claims to base lands which were not accepted as a basis of exchange under the Act of June 4, 1897. We urge your committee to look favorably upon this bill so that other owners of base lands will not have to experience the anxiety, expense and frustration suffered by Soda Flat Company at the hands of the United States Forest Service.

Respectfully,

James R. Parker, Jr.

JRP:lel

cc: Mrs. Donna Smith James, Soda Flat Company
Congressman Robert J. Lagomarsino
Stan Sloss, Esq. (Via Federal Express)

James C. Blanning, Jr.
P.O. Box 60
Aspen, CO 81612
303/925-2667

September 30, 1990

The Honorable Timothy E. Wirth
Vice Chairman
Subcommittee on Public Lands, National Parks
and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Senator Wirth:

I respectfully request that the enclosed statement be made part of the record of the hearing of the Subcommittee on Public Lands, National Parks and Forests on S. 2891, The Mt. Sopris Tree Nursery Exchange Act of 1990.

These exhibits would have been tendered on Wednesday, September 26th, had Federal Express not lost them in transit.

Thank you for your consideration.

Sincerely,

James C. Blanning, Jr.

Enclosures:
2 ea. - Statement with Exhibits

JCBj:bb

Committee Note.--Exhibits retained in subcommittee files.

Statement to the Committee
September 26, 1990

This statement is written to support the fact that the U.S. Government SHOULD NOT take over the worthless Treasurer's (Tax) Deed titles to patented lode mining claims now claimed to be owned by the County of Pitkin, (Pitkin County Commissioners - PCC).

My name is James C. Blanning, Jr., age 53. I was brought to Aspen by my mother in the middle of World War II after my father, Major James C. Blanning, U.S. Army, Philippine Scouts, had been killed by the Japanese as a prisoner of war.

I went through grade and high school in Aspen and have lived there since, except for two years of college and four years U.S. Air Force - Nuclear Weapons Fusing Systems Specialist. I am now actively involved in the exploration and development of silver, lead and zinc deposits of the exact same type that built Aspen and Leadville and I feel I am fair, honest, BALANCED and objective about the situations concerning Aspen, Pitkin County and the patented lode mining claims involved. I can state absolutely that my net worth is less than 50 thousand dollars and I have not made millions "scamming" Pitkin County.

First - let the fact be known to ALL people that this trade has nothing to do with needed open space. It has only to do with the creation of an elitist PRIVATE PRESERVE for a certain element that is already living in Pitkin County or the ultra-rich that can afford to move into the Aspen area. The average price of a private home in the Aspen Metro area is approaching ONE MILLION DOLLARS ($1,000,000.00). Just look at the real estate advertisements in the Aspen Times (the Aspen weekly newspaper).

LAND FIGURES ON PITKIN COUNTY.

Total Area of National Forest Lands	742 square miles +/-	80%
Total Area of Bureau of Land Management Lands	43 square miles +/-	5%
TOTAL FEDERAL LANDS	785 square miles +/-	85%
Total Private Lands in Bureau of Land Management Area	99 square miles +/-	10%
Total Private Lands in National Forest	46 square miles +/-	5%
TOTAL PRIVATE LANDS	145 square miles +/-	15%
TOTAL AREA OF PITKIN COUNTY	930 square miles +/-	100%

About 10% (or 2/3) of the private lands (15%) are ranch lands, undevelopable coal lands and high mountain mining claims, which leaves about 5% developed or developable. Also a part of the National Forest are the 160 Patented lode mining claims totalling 1,809.64 acres, which have been purchased by the U.S. Forest Service for a sum of $3,409,526. For the August 14th, 1990 election Pitkin County had 9,566 registered voters.

The basic premise of the element mentioned above is NO development and there would be NO development, if they could get away with it. Their way of dealing with development has been to make it so horribly expensive that only the ultra-rich can afford to buy land and build. Most of the work force has been driven out of Pitkin County to surrounding areas. 85% of Pitkin County is already basically OPEN SPACE. A brief history of PCC trying to unload said mining claims:

On May 1, 1980, Michael Kinsley, Chairman - Board of County Commissioners - Pitkin County, Colorado, tendered a letter to J.T. Richer, Acting District Ranger - White River National Forest, wishing to DONATE (emphasis provided) one hundred sixty-three (163) patented mining claims to the United States Forest Service (See exhibit "1").

On January 1, 1981, the PCC moved and approved the conveyance of 139 mining claims TO BE DONATED (emphasis provided) to the Forest Service (See Exhibit "2").

On February 10, 1981, a letter was received by Mr. Jon K. Mulford (then the attorney representing the mine claim owners) that the Regional Forester had made the decision that it is in the public interest to accept Pitkin County's DONATION (emphasis provided) with a 45-day appeal period (See Exhibit "3").

On March 27, 1981 a "Statement of Reasons Supporting Appeal and Request for and Oral Presentation of Evidence" (3 pages - double spaced) with exhibits (2 minutes PCC, 3 maps, 20 surveys of record and 43 deeds of record - need only be scanned) which substantiates the title ownerships of the mining claims and should be carefully examined (See Exhibit "4").

On July 7, 1981, a letter from U.S. Forest Service was written to James C. Blanning, Jr. cancelling oral presentation, stating two other parties had filed appeals and that a decision would be rendered within 30 days. This was the first indication that the Forest Service was getting cold feet about the titles to the claims (See Exhibit "5").

On July 21, 1981, a "Decision of the Chief, USDA Forest Service" was written which sustained the decision of the Regional Forester to initiate procedures necessary for acceptance of the DONATION (emphasis provided) and reaffirmed that the Forest Service CANNOT (emphasis provided) ACCEPT TITLE TO ANY LAND THAT CANNOT BE CONVEYED FREE AND CLEAR OF ANY TITLE DEFECTS (See Exhibit "6").

Through 1981 - the Pitkin County Commissioners tried to GIVE (DONATE) 163 or, later, 129 mining claims to the Forest Service and could not do so because they could not deliver good title. The issue was dropped for SEVEN YEARS only to resurface in 1988. The headlines of the local papers give a good look at what was happening. Exhibits "7-1", "7-4" and "7-10".

MEDIA HISTORY
FROM MARCH, 1988 INTO 1990

	Exhibit
MINING CLAIM DEVELOPMENT LOOMS March 8, 1988, Aspen Daily News, by Hal Clifford	"7-1"
SECRET CLAIMS - Letter to the Editor May 26, 1988, Aspen Times, from Ken Moore	"7-2"
COUNTY HOPES TO TRADE ITS MINING CLAIMS FOR SOPRIS TREE FARM July 27, 1988, Aspen Daily News, by Hal Clifford	"7-3"
COUNTY PREPARING FOR LAWSUITS OVER MINING CLAIM DEVELOPMENT October 20, 1988, Aspen Times	"7-4"
ANOTHER LAWYER - INCREASING LITIGATION FORCES PITCO TO HIRE 3RD ATTORNEY November 16, 1988, Times Daily, by Dave Price	"7-5"
EAGLE, PITKIN, USFS EYE TREE FARM February 16, 1989, Aspen Times, by Jane Wilson	"7-6"
PROPOSALS FOR TREE NURSERY INCLUDE GOLF COURSE, FAIRGROUNDS August 14, 1989, Aspen Daily News, Daily News Staff Report	"7-7"
PITCO ATTACKS MINING CLAIM DEVELOPERS - On the Record September 5, 1989, Times Daily	"7-8"
COMMISSIONERS CRACK DOWN ON MINING CLAIMS - Cops & Courts September 6, 1989, Aspen Daily News, Daily News Staff Report	"7-9"
COUNTIES TEAM TO SEEK TREE FARM THROUGH FEDERAL LEGISLATION January 26, 1990, Aspen Daily News, by Michael Bourne	"7-10"
TREE FARM TRADERS SAY NO TO ASPEN MINING CLAIMS May 30, 1990, Aspen Daily News, by Michael Bourne	"7-11"
PITKIN COUNTY SEEKING HELP ON LAND SWAP June 17, 1990, Daily Sentinel	"7-12"

The PCC couldn't give them away (donate them) to the Forest Service in 1981, so they decided to trade them for hundreds of thousands of dollars worth of land in another county and pass the can of worms to the Federal Government. Nothing has changed with regard to the titles except that many of the claims have changed ownership (bought and sold), there has been more development, the owners have more time in possession and the courts have ruled in favor of the owners.

On March 31, 1988, the "Mount Sopris Tree Nursery Acquisition Agreement" was completed "_inter alia_ (what other things), pursuant to Section 29-1-201, _et seq_. C.R.S. and Article XIV, Section 18 of the Colorado Constitution. Section 18 of the Colorado Constitution "Intergovernmental Relationships" (1)(a) gives the general assembly the power to provide by statute (b) service authorities (c) Succession and (d) taxing districts. (2)(a) No prohibition against cooperating or contracting to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units (b)(c)(d) not applicable. Nowhere in the law of the land have I been able to find open space to be a facility (See Exhibit "8").

In October or November, 1988, a 1989 Budget - Elected/Executive Section was presented by the Pitkin County Attorney as follows - verbatim:

1989 BUDGET

DEVELOPMENTAL PROJECTS

ELECTED/EXECUTIVE SECTION

County Attorney

1) Quiet title process for 160 mining claims $ 840,000

Quieting title to 160 mining claims associated with the Mt. Sopris Treefarm exchange will cost an average $500 per claim in uncontested cases which should apply in one-half of the cases, for and amount of $40,000.00 in-house costs.

It is estimated that the other 80 claims will be contested. Assuming the assistance of outside counsel, each case will cost $2,000 litigation costs plus $8,000 attorney's fees, for an amount of $800,000. It is not likely that all these cases would be filed in 1989, and this is an estimate of total project costs.

Substantial savings could be realized for this project by assigning the present Assistant County Attorney to litigation exclusively, and retaining an attorney on a contract basis full-time for two years, at approximately $35,000.00 salary per year, to handle the Assistant county Attorney's other workload. If the project were to take two years, the savings could be over $500,000.00. This is due in part to the fact that our overhead costs would not increase, while outside counsel fees include such costs (See Exhibit "9").

The county attorney attempted to budget $840,000.00 to clear the titles to 160 mining claims. They then filed suit on three (3) mining claims which are now proceeding through district court. If the titles are so easily cured, then why did the PCC not do it themselves?

In the last 20 years, Pitkin County has filed one suit against me on a major land parcel in Aspen, to which the county had a treasurer's (tax) deed, that went to the Colorado Court of Appeals. I have filed suit against the county on a mining claim that went to the Colorado Court of Appeals twice. The County has filed three suits against three friends of mine that purchased Treasurer's (tax) deed mining claims and never ONCE, NOT ONCE, did the county win any decision in ANY court in the State of Colorado, nor did they appeal to a higher court (Supreme).

The PCC use taxpayers dollars in these suits (nothing comes out of their pockets) and the owners have had to pay large sums to defend their property rights. Considering there are less than ten thousand voters in Pitkin County and, given, the said element that does not want any development at all, much less mining, cattle, sheep or horse manure on the trails, there still has to be a balance in this country and this COUNTY. The selling of the claims started out as an attempt to give the little guy a little piece of land to call their own in Pitkin County, and has mushroomed into a vendetta by the PCC (who have little or no real knowledge of the background and NO interest in learning). For the amount of money both counties have spent (Eagle County - $50,000.00 for title search on claims in PITKIN COUNTY plus all the other costs [very expensive lobbyists, etc.]), I could probably have arranged for the county to buy, trade or have donated enough property to effect the exchange for the tree farm. Not once did they try to contact me or, as far as I have been informed, any other claim owners to try to work this out. This can still be worked out, but it should be done on the county level as it is a LOCAL problem and the Federal Government is too far removed from the titles to get involved. There are upwards of 70 DIFFERENT owners of these claims (See Exhibit "10").

My companies, my friends and my investors hold and have held the titles and possession to these mining claims for over TEN years and we will continue to fight for our legal rights under the laws of the Constitution of the United States of America and of the State of Colorado. We will do it in Federal Court if these tax titles are ever transferred to the Federal Government. Also, the Federal Government CANNOT go into Federal Court and quiet title (clear the title) in mass, as has been suggested. For the most part, each claim has a separate title history, tax history and, therefore, a procedural history as to the tax deed issued on it.

I have not received a copy of the legislation and have only Senator Bill Armstrong's office to thank for having any idea that the hearing was taking place. I only learned about it in the middle of last week and many, many hours of work and midnight oil have gone into this. If it seems a little disjointed, please bear with me and a wonderful lady named Brenda Benz who did the typing, many revisions and additions.

Please do not hesitate to ask me any questions, as I have nothing to hold back and know that the Constitution and the laws of the State of Colorado will support the title held by the owners against Pitkin County or the Federal Government.

Many thanks for the time and energy directed to this appeal to you.

I remain - sincerely,

James C. Blanning, Jr.
P.O. Box 60
Aspen, CO 81612-0060
303/925-2667

Index - Exhibits "1" thru "10"

Exhibit	
"1"	Letter - Michael Kinsley (PCC) to J.T. Richer - Acting District Ranger, May 1, 1980, with list of 139 claims
"2"	Minutes - (PCC) Regular Meeting - January 26, 1981
"3"	Notice of Appeal - James C. Blanning, Jr. to Craig C. Rupp - Regional Forester, March 5, 1981
"4"	Statement of Reasons supporting Appeal and Request for an Oral Presentation of Evidence - James C. Blanning, Jr. to Craig W. Rupp - Regional Forester, March 27, 1981
"5"	Letter - Rodney F. Young for R. Max Peterson, Chief - Forest Service, to James C. Blanning, Jr., July 7, 1981
"6"	Decision of the Chief, USDA Forest Service, Gary E. Cargill for R. Max Peterson, Chief, July 11, 1981
"7-1 thru 7-12	Headlines of local newspapers from March 1988 into 1990
"8"	Mount Sopris Tree Nursery Acquisition Agreement, between Eagle County Board of County Commissioners and Pitkin County Board of County Commissioners, March, 1988
"9"	1989 Budget Developmental Projects, Elected/Executive Section, County Attorney
"10"	Individual Ownership Breakdown County Tax Deed Mining Claims, as of October 13, 1989

PCC\LET_COM1.JCB

Natural Resources Users' Coalition
P.O. Box 3201
Rapid City, SD 57709

March 22, 1990

Rich Harr
Homestake Mining Company
Land Managment Division
Box 777
Lead, SD 57754

Dear Mr Harr:

The NRUC is a coalition of 20 environmental and outdoor recreational oriented organizations with a total membership fluctuating between 3000 and 3500 persons. The NRUC Officers and Board of Directors unanimously and heartily indorse the proposed South Dakota-Colorado Land Exchange which would transfer approximately 14000 acres owned by Homestake Mining Co., located in the Black Hills of SD for approximately 1300 acres of US Forest Service land in Summit County, Colorado. We see many advantages for increased public recreation and wildlife habitat enhancement by US Forest Service acquisition of the Homestake Mining Co. land in the Black Hills via the proposed exchange.

Sincerely,

Gary Engel
GARY ENGEL
President, NRUC

CC: Senator Tom Daschle
Senator Larry Pressler
Congressman Tim Johnson

March 7, 1990

Mr. Rich Harr
Homestake Mining Land Division
Box 777
422 Main Street
Lead, SD 57754

Dear Rich:

I would like to express my appreciation for the tour of the proposed land exchange areas conducted by the Homestake Land Management Division. As chairman of the Public Land Committee for the S.D. Wildlife Federation, I feel that the proposed exchange of Homestake Land in the Black Hills to the U.S. Forest Service for Forest Service Lands in Colorado, is a good proposal.

The presentation of the proposed exchange by yourself and Jim Wainwright, including the flight over the proposed areas and the tour by vehicle, helped clarify the value of these areas to the public. Several values are apparent and include valuable deer winter range and wildlife habitat, high quality trout fisheries, as well as aesthetic natural beauty, (Spearfish Canyon).

We feel this exchange would be beneficial from a national standpoint as well as for South Dakota, because of the numbers of people who come to the Black Hills from many other states to enjoy the recreational and scenic values.

Page 2
Mr. Rich Harr

We will encourage the U.S. House of Representatives and Senate to act favorably on this proposal.

Sincerely,

Don Hausle

Don Hausle, Chairman Public Lands Committee
S.D. Wildlife Federation

cc: Governor George Mickelson
Senators Tom Daschle
Larry Pressler
Tim Wirth
William Armstrong
Congressmen
Tim Johnson
Ben Campbell
Andy Wiesner, Western Land Exchange
Roger Pries, Ex. Director- S.D.W.L. Federation
Dave Sieman, President - S.D.W.L. Federation

TRANSMITTED FROM 06.12.90 14:52 P.02

Black Hills Group of the SIERRA CLUB
Box 1824, Rapid City, South Dakota 57709

12 June 1990

Hon. Tim Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Tim;

I am writing to reiterate the support of the Black Hills Group of the Sierra Club for the proposed "swap" of land in the Black Hills between Homestake Mining Company and the U.S. Forest Service.

We understand that the Forest Service has asked that mineral and water rights be transferred, in addition to surface title.

While we would like to see such a complete transfer, we would hope that its lack would not be an insuperable obstacle to such an important land transfer. In other words, the benefits to be gained from transfer of surface title alone are, as we see it, great enough to make the deal worthwhile.

Perhaps a compromise could be reached, in which mineral rights would be transferred in some tracts (e.g., South Stagebarn Canyon or Spearfish Canyon) and not in others.

As we see it, the public stands to gain so much, even if only the surface rights are transferred, that this agreement should go through. As we said before, we are in support of the land transfer.

I would ask that you please convey our support to the appropriate committees studying the authorization of the transfer, as we are unable to testify in person.

Thank you very much. If you have any questions, please do not hesitate to contact us.

Sincerely,

Norman E. Nelson
Vice Chair, BHG

Black Hills Group of the SIERRA CLUB
Box 1624, Rapid City, South Dakota 57709

March 23, 1990

Mr. Rich Harr
Homestake Mining Company
422 Main Street
Lead, SD 57754

Dear Mr. Harr:

We are pleased to inform you of our support for the proposed land exchange of Homestake lands in South Dakota for U.S. Forest Service land in Colorado. These lands have been under Homestake's good care for many years. We look forward to being involved in their stewardship when they are in the public trust.

To this end we intend to pursue a Wild and Scenic River designation for Little Spearfish and Spearfish Creeks. We hope we will have the support of all the parties involved here in our endeavors.

We would also like to request that Homestake consider the transferral of its mineral rights in the lands conveyed to the Forest Service, and that the latter remove these lands from mineral entry.

The Black Hills Group is not familiar with the Federal land in Colorado selected for this exchange. We will defer to Sierra Club Groups in Colorado for any concerns they might have for that land.

Respectfully yours,

Michael M. Melius

Michael M. Melius
Conservation Chair

cc: Sen. Pressler, Sen. Daschle, Congressman Johnson,
Supervisor Kenops

CITY OF SPEARFISH
722 MAIN STREET, SPEARFISH, SOUTH DAKOTA 57783

xc: Andy W.
Tom G.
8/23/90

August 22, 1990

Honorable George Miller
House Interior Committee
1522 Longworth Office Building
Washington, D.C. 20515

Dear Congressman Miller:

I am writing to urge you to support the Black Hills land exchange bill sponsored by Congressman Tim Johnson. The Spearfish Canyon lands which the Forest Service would acquire are in a beautiful location and may be in danger of being sold as the real estate boom occurring in Deadwood and Spearfish spreads to surrounding areas. I understand that Homestake has agreed with the Forest Service to surrender any rights it may have had to mine in Spearfish Canyon. That agreement will certainly protect one of the most beautiful canyons in the United States.

In summary, this is very beneficial for the U. S. Government and especially for those of us who live in the northern Black Hills.

Very truly yours,

Fred W. Romkema
Mayor

cc: Senator Daschle
Senator Pressler
Congressman Johnson

PUBLIC WORKS, 642-8271 • PLANNING & ZONING, 642-8277 • LIBRARY, 642-4645
WASTE WATER TREATMENT PLANT, 642-5764 • FINANCE OFFICE, 642-7775 • POLICE DEPT., 642-2755

Telephone (605) 584-1401

City of Lead
801 West-Main
LEAD, SOUTH DAKOTA 57754

September 7, 1990

The Honorable George Miller
House Interior Committee
1522 Longworth Office Building
Washington, D.C. 20515

Dear Congressman Miller:

Please know that I support the Black Hills Land Exchange bill sponsored by Congressman Tim Johnson. I believe that beautiful Spearfish Canyon may be in danger of being sold due to the real estate boom in Deadwood, Lead, Spearfish, as well as the surrounding areas. I would like to see this very special area preserved and believe that this bill is the best way to accomplish that end.

I support putting Spearfish Canyon land, as well as the other 11,000 acres of South Dakota land, into the public's hands through this proposed land exchange.

Thank you for your consideration.

Very Sincerely,

Jacqualyn Fuller

Jacqualyn G. Fuller
Mayor
CITY OF LEAD

JGF/jm

CC: Senator Daschle
Senator Pressler
Congressman Tim Johnson

xc: Fax Andy W. 9-10-90

"The City with the Heart of Gold"

CITY OF BELLE FOURCHE, BELLE FOURCHE, SOUTH DAKOTA
City Hall, 606 6th Avenue Belle Fourche, SD 57717
At the New Center of the Nation 892-2494
EQUAL OPPORTUNITY EMPLOYER

September 6, 1990

Honorable George Miller
House Interior Committee
1522 Longworth Office Building
Washington, D.C. 20515

Dear Congressman Miller,

At a recent meeting of the Northern Hills Mayors Association discussion was held concerning the Homestake Mining Co./Forest Service land trade, which would include land located in Spearfish Canyon, Lawrence County, South Dakota. I am writing to request your support of the Black Hills Land Exchange Bill sponsored by Congressman Tim Johnson.

The land that the Forest Service would acquire is located in Spearfish Canyon which is one of the most beautiful natural canyons in the United States. In addition to the natural beauty of the canyon, there is also considerable history within this canyon for the people of our area. With a current real estate boom in this area there is a danger of the canyon area being developed for housing tracts, this would be of considerable loss to the residents as well as the tourists. It is my understanding that the Homestake Mining Co. has agreed to not do any mining in the canyon, so the canyon would then be protected and maintained in its natural state so that all people can enjoy its beauty.

I urge your support of the Black Hills Land Exchange Bill.

Sincerely yours,

Willard Pummel, Mayor
City of Belle Fourche

WP:hs

cc: Senator Daschle
Senator Pressler
Congressman Johnson
Rich Harr, Homestake Mining Co. ✓

RECEIVED 9-10-90

Fax - Andy W.

TECHNICAL INFORMATION PROJECT

POST OFFICE BOX 1371
RAPID CITY, SOUTH DAKOTA 57709

TELEPHONE (605) 343-0439

March 19, 1990

Mr. Rich Harr
Homestake Mining Company
Box 777
Lead, South Dakota 57754

Dear Mr. Harr,

Thank you for allowing a representative of the Technical Information Project to join your tour of trade lands on February 19th. To date I have not heard any negative comments about the proposal to turn over lands to the Forest Service from my Board or others in the environmental community. Although our organization has not adopted a formal position on the proposal, I personally support the concept and think it will be beneficial to the public and Black Hills National Forest. My one concern is the retention of water and mineral rights by HMC.

If you have any questions or comments, feel free to call.

Sincerely,

Deb Rogers
Executive Director

3-20-90

Mr. Murray Pope
Po Box 475
Snowmass, CO 81654

September 21, 1990

Senator Dale Bumpers
Senate Committee on Public Lands
Senate Office Building
Washington, D.C

Re: Senate Bill 2891

Dear Senator Bumpers:

I would like this statement to be made part of the public record as strongly supporting S. 2891.

This land exchange would benefit the vast majority of citizens in this area, as it would protect both open space and Wilderness.

The only ones opposed to this bill are a few who claim to be miners but are actually professional manipulators and "wheeler-dealers" who are trading in mining claims as real estate for their own personal gain and at the expense of the public and public lands.

I urge that all possible be done to speed passage of this bill.

Sincerely,
Murray Pope

Copy: Senator Tim Wirth

"Voice of the Western Slope, since 1953"
A coalition of counties, communities, businesses & individuals
303 / 242-3264 ★ FAX 303 / 245-8300
634 Main Street, Suite #6 ★ P.O. Box 550
Grand Junction, Colorado 81502-0550

September 20, 1990

The Honorable Dale Bumpers
Subcommittee on Public Lands and
National Parks
Energy & Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

I am writing to let you know of the strong interest throughout Western Colorado in S.2891, which would affect a land exchange in Pitkin and Eagle Counties with the United States Forest Service.

The Mount Sopris Tree Farm in Pitkin County, Colorado would be exchanged for county-owned properties in Pitkin and Eagle Counties under this legislation. The Forest Service would gain ten times more land in the deal, including a number of parcels adjacent to wilderness areas. The local governments need to protect the small amount of remaining open space in the Roaring Fork Valley, and the tree farm (which is no longer used or needed by USFS) represents one of the few opportunities to do so. Other potential uses could result in development of the land after disposal.

We want you to know that this issues is important to all the 300,000 people of Western Colorado, not just in those two counties. CLUB 20 represents 22 counties, 72 towns, dozens of chamber and resort associations, water districts, school districts, and hundreds of businesses and individuals intersted in the future of the Western Slope. On behalf of all those members, thank you for holding the hearing on this matter September 26, and we strongly encourage your committee to act favorably on the matter. Many thanks!

Sincerely,

Greg E Walcher

Greg E. Walcher
President

GEW:cmf

colorado ski country USA®

bc: Bob Maynard
John Lay

September 24, 1990

The Honorable Tim Wirth
United States Senator
380 Russell Senate Office Building
Washington, DC 20510

RE: S. 2891 - Mt. Sopris Tree Nursery Exchange

Dear Senator Wirth:

Colorado Ski Country USA, the trade association representing 28 ski areas in Colorado, supports your bill S. 2891, insuring that the Mt. Sopris Nursery near El Jebel will be transferred to Eagle and Pitkin Counties for public use.

We understand that valuable national forest lands will be exchanged for the tree farm acreage in the Roaring Fork Valley and that the acreage will be dedicated to public recreational use. The property's location, adjacent to State Highway 82, lends itself to the proposed uses such as baseball fields, tennis courts, riding facilities and senior citizen activities.

We applaud this legislative effort on behalf of the citizens of Colorado, in general, and the people who work and live in the Aspen area, specifically.

We appreciate the opportunity to become part of the public record.

Sincerely,

Rennetta M. Lueckenhoff

Rennetta M. Lueckenhoff
Director, Government Affairs

rl

1560 broadway, suite 1440 denver, colorado 80202 (303) 837-0793

COLORADO COUNTIES INC.

September 21, 1990

The Honorable Dale Bumpers
Chairman, Senate Subcommittee on Public Lands,
 National Parks, and Forests
308 Dirksen Senate Office Building
Washington, D.C. 20501

RE: Senate Bill 2891 FTR

Dear Senator Bumpers,

The Board of Directors of Colorado Counties, Inc. has reviewed and discussed the issue of the Mount Sopris Tree Farm Land Exchange and Senate Bill 2891 which was introduced by Senator Tim Wirth and on which we understand your committee will conduct a hearing on September 26. We recognize that this exchange will be mutually beneficial to both the Counties, the Federal Government, and that the public interest will be well-served.

After discussing this issue with Pitkin and Eagle Counties, the Colorado Counties, Inc. Board of Directors voted to strongly support this land exchange and to request the support and proposed prompt action of your subcommittee in the effort to obtain approval of this legislation.

Sincerely,

Harry P. Bowes

Harry P. Bowes
Executive Director

cc: Colorado Counties Board of Directors
 Senator Timothy E. Wirth
 Eagle County Board of Commissioners
 Pitkin County Board of Commissioners

1177 Grant Street • Denver Colorado 80203 • (303) 861-4076 • Fax (303) 861-2818

American Ski Federation
207 Constitution Avenue, N.E.
Washington, D.C. 20002

202/543-1595

Representing the Interests of American Skiing

September 25, 1990

Honorable Tim Wirth
United States Senate
380 Russell Senate Office Building
Washington, D.C. 20510

Dear Tim:

The American Ski Federation supports your bill, S. 2891, which facilitates the land trade of the United States Forest Service Mt. Sopris Nursery near El Jebel to Pitkin and Eagle Counties for public recreational use.

The area in question has experienced extremely rapid growth, which has produced an increased demand for public recreational facilities. This problem is exacerbated in the Roaring Fork Valley, where Aspen and Snowmass are located, by the preponderant federal land ownership and steep terrain which places developable land at a premium. As a result, much of the land that local governments might use for public purposes is already developed.

The Mt. Sopris Tree Nursery is a unique, flat location in the Valley where public needs such as softball fields, tennis courts, riding facilities, fairgrounds, and other public recreation facilities can be accommodated. Due to the property's location on State highway 82 and its size, existing buildings and access, it is the single perfect location to meet these needs.

Enactment of S. 2891 will meet all these objectives and will also help consolidate land ownership patterns on the scenic flank of Aspen Mountain and in several surrounding wilderness areas that will benefit our members and provide important public services which are now lacking in the lower Valley where many of those who work in Aspen and Snomass reside and will benefit directly from this land trade.

Sincerely,

Joseph T. Prendergast
President

cc: Senator Dale Bumpers
Senator William Armstrong
Congressman Ben Campbell
Congressman Hank Brown

BE AWARE
SKI WITH CARE

Combined Testimony of the Aspen Wilderness Workshop,
Colorado Environmental Coalition
and
Pitkin County Parks Association

submitted to
The Senate Subcommittee on Public Lands, National Parks and Forests
concerning
S. 2891 - Mt. Sopris Tree Nursery Land Exchange
September 26, 1990

Dear Senator Bumpers,

The following testimony is submitted to you in behalf of the three organizations listed above. We concur that passage of S. 2891 will serve the best interests of the citizens of Pitkin and Eagle Counties along with those of the many tourists who come to this part of Colorado each year to enjoy its unique beauty.

Enactment of S. 2891 will further several important public objectives. First and foremost, it will eliminate roughly 1,300 acres of inholdings in the White River National at over 50 separate locations and consolidate those inholdings into the surrounding National Forest ownership. This will avoid potential conflicts which can arise from fragmented ownerships, including problems pertaining to access. It will also insulate the 1300 acres from any and all future challenges to public ownership based on theories of adverse possession, the inability of local government to hold lands for open space, and other arguments which we believe are completely frivolous but which nevertheless can require protracted litigation to lay to rest.

Second, almost 700 hundred of the acres the Forest Service would acquire under S. 2891 are located in some of the nation's most spectacular and heavily used wilderness areas - particularly the Maroon Bells-Snowmass Wilderness. A quick look at the location of the numerous, spread-out wilderness inholdings shows many of them to be along heavily used hiking routes and popular visitation areas such as Cathedral Lake, American Lake, Conundrum Creek, Castle Peak, Copper Pass, Montezuma Basin and other areas well known to those familiar with Colorado's backcountry. And lest anyone forget the problems inholdings can cause, many of these properties are near the now infamous Conundrum Creek marble deposits where Pitkin County, the Forest Service, the Colorado Congressional delegation and many others have spent inordinate amounts of time and efforts attempting to resolve an inholding problem.

Third, the legislation sets up an orderly process to resolve any claims which might arise after passage of the legislation relating to the adequacy of the title delivered to the government by Eagle and Pitkin Counties. We especially like the provision that should a party prevail against the government, the Forest Service could elect to keep the land involved (e.g. if it were located in wilderness), and pay monetary or other just compensation to the claimant. This is a restatement of existing law (Act of December 25, 1972) which allows the United States, when faced with an adverse real property judgment, to retain lands it deems important for public ownership. We understand that the Counties have agreed to reimburse the United States in the unlikely event of any such loss of title, so the public interest should be fully protected.

We also believe that given the spurious nature of the potential claims against the County-owned lands, which are based upon "wild deeds" (i.e. no chain of title), that it is only fair that anyone asserting such a claim be required to seek adjudication of the matter in a timely manner and have the burden of proof of establishing such claim. The claims against the County appear to be a blatant attempt to get something for nothing, and we believe S. 2891 is, if anything, overly fair in its provisions giving the claimants their day in court.

In that regard we should add that our groups have become very frustrated with certain individuals in the Aspen area who appear to have made a career of attempting to use threats of bogus occupancy or development schemes, appeals, litigation or other procedural devices to harrass the Forest Service, local government or others into agreeing to settlements which reward them with land or money in return for relinquishing other bogus claims or development schemes. The individuals leverage, of course, is that both the Forest Service and local government have limited budgets and legal staff to address multiple title clouds or development schemes, and settlement agreements are sometimes reached merely to avoid the time and cost of pursuing multiple quiet title, trespass or other actions. We believe it is time the Forest Service got tough with these individuals, particularly where, as with this case involving the County owned lands, any adverse impacts will ultimately result in the loss of wilderness, scenic or recreational values on surrounding National Forest lands. In short, it is generally the public lands that bear the brunt of adverse impacts from developments (access roads, cabins, mining etc.) by such self-styled "entrepreneurs", and it is therefore most logical that the public should anticipate such impacts and attempt to address them in advance in a fair but orderly and expeditious manner...which is exactly what S. 2891 proposes.

Finally, Mr. Chairman, our groups support S. 2891 because we are acutely aware of the financial strains which skiing and tourism development have placed on local government in the Roaring Fork Valley. While the Valley now enjoys significant wilderness and national forest resources to accomodate backcountry recreation, off-road vehicle use, alpine and cross-country skiing and other forms of "dispersed" recreation, there is a lack of affordable land

(3)

to accomodate other public recreation needs such as softball fields, equestrian facilities, tennis courts, fairgrounds and the like. We also understand that the Counties plan to locate a recycling facility and Senior Citizen meeting center at the Tree Nursery site, and preserve some of the land as open space - all of which are extremely worthy goals, in our opinion. Accordingly, we strongly share the Counties' view that the bulk of the Nursery should be transferred to the Counties for continued public use, rather than being sold at auction for potential real estate development.

In summary, we believe S. 2891 will further the public interest in many ways and urge that it be favorably reported from your Committee at the earliest possible date.

1776 Lincoln St., Suite 1200
Denver, CO 80203-1029
FAX: (303) 860-1439
Phone: (303) 831-7411

**Colorado Association of
Commerce and Industry**

September 19, 1990

The Honorable Tim Wirth
United States Senate
380 Russell Senate Office
Washington, D.C. 20515

Tim

Dear Senator Wirth:

The Colorado Association of Commerce and Industry would like to go on record as favoring the enactment into law of S. 2891, the Mt. Sopris Tree Nursery Land Exchange legislation, which we understand is coming up for Senate hearing next week.

As you are no doubt aware, ski area development in our State has brought enormous benefits to the West Slope and particularly to rural areas which have seen hard times recently with more traditional forms of commerce. While those benefits are a real plus for our economy, rapidly rising real estate prices in areas such as Aspen have made it difficult for local governments to acquire land for public recreational facilities, and to meet other public needs.

In the particular case of the Mt. Sopris Tree Nursery, a 217 acre parcel of surplus government land is potentially available for continued public use by Pitkin and Eagle Counties. However, the Counties do not have the funds available to purchase the land outright. Accordingly, they are proposing to exchange valuable lands they currently own in return for the surplus Tree Nursery property.

The proposed exchange makes sense to us because it will enable the counties to preserve open space and provide much needed recreational facilities, A Senior citizen meeting center, recycling center, fair-grounds and other public use facilities at low cost. Such facilities benefit virtually all businesses and residents. The need is especially dire in the rapidly growing Roaring Fork Valley where such facilities are currently lacking or wanting, and where other large size parcels of land for such purposes do not appear available at a price the counties could afford.

Accordingly, the Colorado Association of Commerce and Industry urges swift passage of S. 2891 and requests that this letter be made a part of the formal hearing record.

Thank you also for introducing the legislation and attempting to complete action on it yet this fall.

Sincerely,

George S. Dibble

RECEIVED
SEP [illegible] 1990
BOARD OF COUNTY COMMISSIONERS
EAGLE COUNTY

STATEMENT OF WAYNE HANSEN
of Orem, Utah

(1) In 1953, Mrs. Hansen's parents, Lynn C. and Elaine Neilson, purchased by tax deeds from Sevier County, Utah, the following described property: Twp 26S Range 2E Sec. 32. NW 1/4 and NE 1/4 of SW 1/4. That property had originally been owned by the State of Utah and had been sold in 1903 to Charles Zeigler who conditionally relinquished it to the United States in 1903 under the Act of June 4, 1897. No selection in exchange was ever completed, nor was Mr. Zeigler compensated for the land in any other manner. The Forest Service acquired the above property from Mr. and Mrs. Neilson in a land exchange on 2/2/67.

(2) The Neilsons also purchased the following described lands in Fish Creek National Forest on 5/21/62 from Sevier County, Utah.

Twp. 2 4S Range 2E Sec. 10 - E 1/2 of NE 1/4
Sec. 15 - NW 1/4 of SE 1/4

The original owner, the State of Utah, had sold it to George Badger in 1904 who sold it to WE Moses Land Scrip & Realty in 1904, who conditionally relinquished it to the United States on 7/23/04 under the 1897 Act. No selection in exchange therefore was ever completed nor was WE Moses ever compensated for his land. Sevier County eventually again place the property on the tax rolls, and later took a deed on 2/4/19 for unpaid property taxes.

On 5/11/70, at the request of the Forest Service, the Neilsons granted an easement for a road right-of-way across the E 1/2 of the NE 1/4 of Sec. 10. Thereafter the Neilsons sold the E 1/2 of NE 1/4 of Sec. 10 to Douglas Peterson, who built a summer home and resold portions to several others. The Neilson built a summer home on the NW 1/4 of the SE 1/4 of Sec. 15 and resold 32 of the 40 acres to five other individuals.

Within the last five years the Forest Service filed an affidavit of ownership (copy attached) with the County Assessor and persuaded him to take the land off of the tax rolls. The buyers to whom the Neilsons had resold the land and the title company hired a local attorney who demanded return of all funds paid for the property, plus cost of improvements, together with interest thereon from Mrs. Neilson, whose husband had previously died. Mrs. Neilson, who is 81, paid a total of between $110,000 and $115,000 to settle the case and has been left virtually without assets except for her home and Social Security payments.

177 East 900 South • Room 102
Salt Lake City, Utah 84111
801 • 355 • 0509

SIERRA CLUB SOUTHWEST OFFICE

The Honorable Dale Bumpers, Chairman
Senate Subcommittee on Public Lands,
National Parks and Forests
Dirksen 308
Washington, DC 20510

October 5, 1990

Dear Chairman Bumpers,

Please accept the enclosed comments regarding S. ~~2518~~ 2815, the Kokopelli National Outdoor Theater Act, on behalf of the Sierra Club. They are written by Mr. Jack Campbell, who serves in a volunteer capacity as Conservation Chair of the Canyonlands Group of the Sierra Club's Utah Chapter. Mr. Campbell lives in Castle Valley near Moab, Utah, the site of the proposed Kokopelli National Outdoor Theater. Like so many Sierra Club members in Utah, Mr. Campbell spends much of his free time enjoying the spectacular beauty of the Canyonlands country in the vicinity of his home and is committed to its protection.

It is our intent that these comments be included in the hearing record on S. ~~2518~~ 2815. We hope that this meets with your approval.

Thank you for the opportunity to comment.

Sincerely,

Lawson LeGate

Lawson LeGate
Associate Southwest Representative

Re: KOKOPELLI NATIONAL THEATRE---Moab Utah

The Kokopelli National Theatre project could be either a major asset or a substantial liability to the Moab community, depending upon the quality of planning and foresight that are brought to the project. Unfortunately, neither planning nor foresight have characterized this project to date.

In their rush to obtain quick approval, the project proponents have made mistakes that may now make community support difficult to achieve and may prevent the project from occurring in an acceptable manner. Both positive outcomes were originally possible.

The proposed theatre would be the first permanent development on the canyon rim above the Moab valley. This mesa is currently very extensively used by other recreational groups (mountain biking, Jeeping, hiking, and camping). The lack of development is a major component of its beauty and its attraction to a diverse cross section of the public. This pristine beauty is also why this area was selected by the project proponents.

The land chosen for the project site is bracketed on two sides by Utah state school trust lands. As is the case with most Utah state lands, this land had been available for sale or lease without regard to the end use to which it might be put. Top dollar defines the "highest and best" use of Utah state land. Both the quality of the project itself and of a large amount of important BLM land would have been severly compromised had this state land not been withdrawn from the market. This state land has been temporarily withdrawn for a period of 18 months, during which time BLM and Utah Division of State Lands are to find a land exchange to remove all Utah state lands from the surrounding management area. The creation of either a National Recreational or Conservation Area has been proposed following completion of the land exchange.

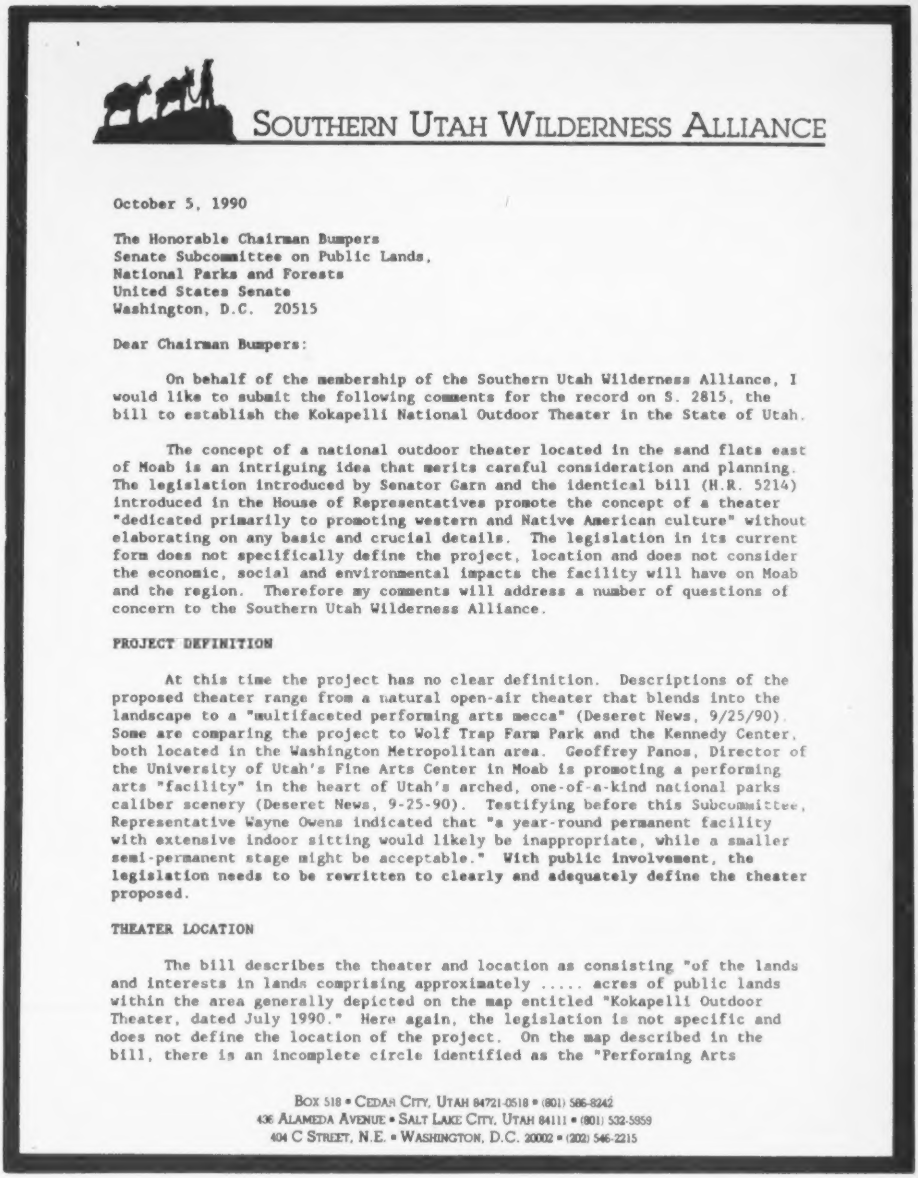
The completion of this land exchange is so important that the board of trustees governing this project (Moab Arts Center), voted in their July 21, 1990 board meeting to make the completion of these land exchanges a precondition for this project to move ahead. (Because of the recreational importance of this area, this land should have been exchanged several years ago. The land exchange is important regardless of whether of not there is a Kokopelli National Theatre.) While the land exchange could have been completed relatively easily a year ago, it will now be a painful and difficult process, with Utah state lands demanding a very high exchange value.

We request that any future legislation include language making the completion of the exchange of the nine parcels of state land in the proposed Slickrock Recreation Area a precondition for any further advancement of this project.

Local concern (and opposition) to the project has grown proportionately as the project has expanded from an environmentally appropriate open air theatre located in a beautiful, natural sandstone amphitheatre, to a number of large, man-made structures designed more for the needs of commercial staging and filming operations than as a way to have people enjoy artistic performances in a setting of great natural beauty. The later versions of this expanded project seem much more appropriate in downtown Moab than in a pristine area with no other existing development. A large scale project could possibly be sited in the approximate area, but much more fore-thought would have to be employed in selecting a site than we have seen so far.

This project (if done properly) could help Moab diversify its economy and help to avoid the "boom and bust" cycles that have plagued this region in the past. Mining and ranching went through their respective rises and falls, and the same is likely with the current tourism based economy. (The gas price increases we are now experiencing could make this happen all too soon.) Were Moab to establish itself as a high quality center for the performing arts, we would then be that much less dependent upon only a single industry.

Hopefully this project will procede (after completion of the land exchanges) in a manner compatible with the beautiful land about us, strengthening and broadening our economic and cultural base.



SOUTHERN UTAH WILDERNESS ALLIANCE

October 5, 1990

The Honorable Chairman Bumpers
Senate Subcommittee on Public Lands,
National Parks and Forests
United States Senate
Washington, D.C. 20515

Dear Chairman Bumpers:

On behalf of the membership of the Southern Utah Wilderness Alliance, I would like to submit the following comments for the record on S. 2815, the bill to establish the Kokapelli National Outdoor Theater in the State of Utah.

The concept of a national outdoor theater located in the sand flats east of Moab is an intriguing idea that merits careful consideration and planning. The legislation introduced by Senator Garn and the identical bill (H.R. 5214) introduced in the House of Representatives promote the concept of a theater "dedicated primarily to promoting western and Native American culture" without elaborating on any basic and crucial details. The legislation in its current form does not specifically define the project, location and does not consider the economic, social and environmental impacts the facility will have on Moab and the region. Therefore my comments will address a number of questions of concern to the Southern Utah Wilderness Alliance.

PROJECT DEFINITION

At this time the project has no clear definition. Descriptions of the proposed theater range from a natural open-air theater that blends into the landscape to a "multifaceted performing arts mecca" (Deseret News, 9/25/90). Some are comparing the project to Wolf Trap Farm Park and the Kennedy Center, both located in the Washington Metropolitan area. Geoffrey Panos, Director of the University of Utah's Fine Arts Center in Moab is promoting a performing arts "facility" in the heart of Utah's arched, one-of-a-kind national parks caliber scenery (Deseret News, 9-25-90). Testifying before this Subcommittee, Representative Wayne Owens indicated that "a year-round permanent facility with extensive indoor sitting would likely be inappropriate, while a smaller semi-permanent stage might be acceptable." With public involvement, the legislation needs to be rewritten to clearly and adequately define the theater proposed.

THEATER LOCATION

The bill describes the theater and location as consisting "of the lands and interests in lands comprising approximately ..... acres of public lands within the area generally depicted on the map entitled "Kokapelli Outdoor Theater, dated July 1990." Here again, the legislation is not specific and does not define the location of the project. On the map described in the bill, there is an incomplete circle identified as the "Performing Arts

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436 ALAMEDA AVENUE • SALT LAKE CITY, UTAH 84111 • (801) 532-5959
404 C STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 546-2215

Page two

Complex". According to Bureau of Land Management (BLM) staff the circled area is approximately 10 acres. How was this area decided and why 10 acres? Since the theater itself has not been defined how can a location and size be determined? **The exact size and location of the complex must be included in the legislation including a justification for the decision.**

The map also contains an arrow pointing to an undefined area described as "Theater of the Stars." None of the testimony before the Subcommittee or the legislation has mentioned this theater that is physically separate from the ten acre Performing Arts Complex circled on the map. The Theater of the Stars is precariously close to the boundaries of two wilderness study areas (WSA's). Both of these WSA's are included in Representative Owens Utah Wilderness Bill (H.R.1500) as areas proposed for wilderness designation. **The Southern Utah Wilderness Alliance is firmly committed to wilderness protection for the 5.1 million acres in Representative Owens bill. We strongly object to any development that would adversely affect these Wilderness Study Areas.**

MANAGEMENT PLAN

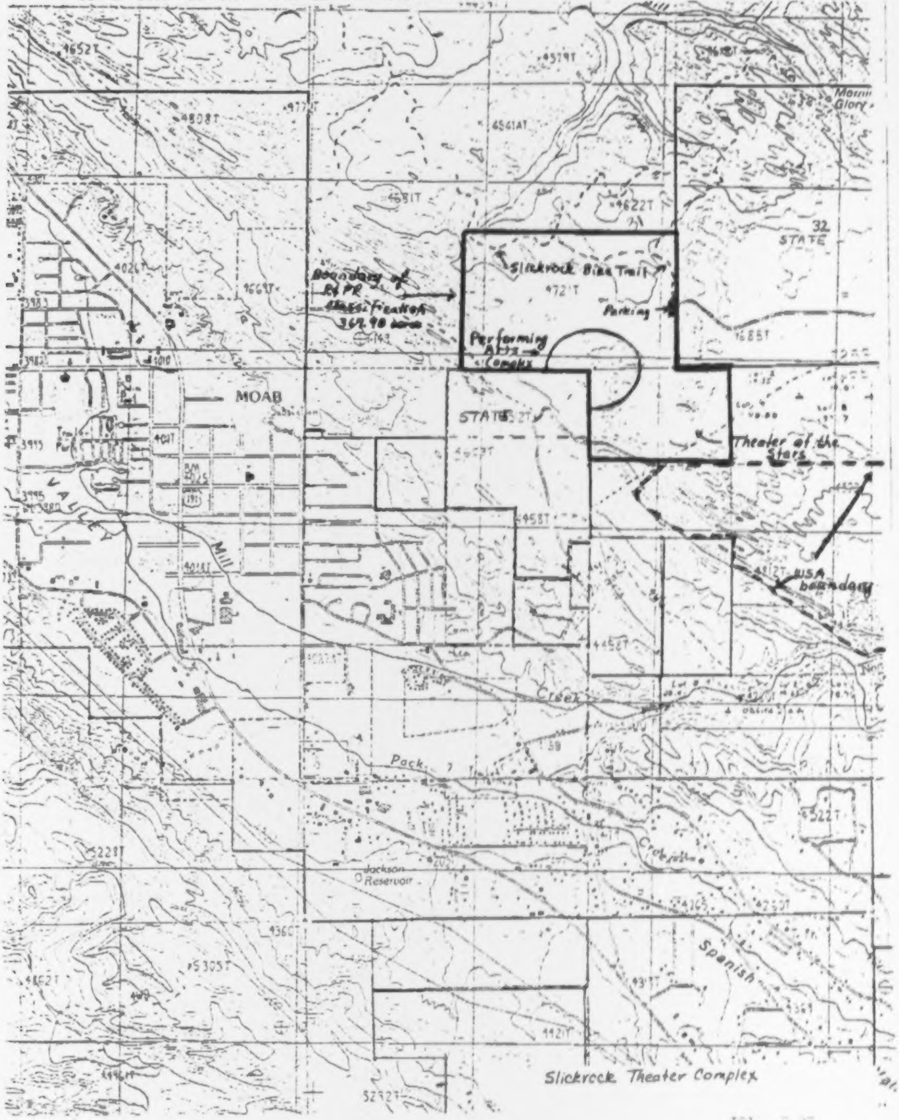
Not only is there a need to clearly define the project and its location, a comprehensive management plan for the theater and surrounding area is needed. The plan needs to address the potential impacts of the project on existing land uses and activities. As Representative Owens noted in his testimony there has been a lack of public involvement thus far in the project that has led to legitimate fears that the project may lead to speculation and inappropriate development of the area. Such a planning effort is now just beginning with a team that consists of representatives from the state, the University, BLM and local citizens. The BLM has identified a "management area" surrounding the proposed theater facility. This area includes 4,360 acres of state lands that will need to be exchanged and a number of lease adjustments will need to be negotiated before any management plan can be implemented. **The comprehensive management plan for the Kokapelli project must convince the citizens of Moab and Utah that this theater, on an appropriate scale, will preserve the naturalness of the area, be economically beneficial to the community and protect the character of Moab -- a town whose survival depends on maintaining its character.**

The Southern Utah Wilderness Alliance appreciates this opportunity to submit our comments on the Kokapelli National Outdoor Theater Act.

Sincerely,

Cynthia Shogan
Washington Representative

enclosures


Boundary of R&PP Classification 367.90 acres
Slickrock Bike Trail
Parking
Performing Arts Complex
Theater of the Stars
USA boundary
STATE
32
STATE
MOAB
Mill
Creek
Pack
Crab
Spanish
Jackson Reservoir
VALLEY

Slickrock Theater Complex

Utahn prepares pitch for theater in middle of nature

Members of Wilderness Ballet perform along Colorado River 25 miles from Moab.

■ Red rock terrain: Bikers know of site. Now Panos wants to share secret with Congress.

By Ellen Fagg
Deseret News staff writer

It sounds like a bad riddle, but what do you get when you mix mountain bikers with ballet dancers?

Try Moab.

Mountain bikers, speaking with French, German and Russian accents, already have discovered southeastern Utah's slickrock treasure. Now, Geoffrey Panos, the director of the University of Utah's Fine Arts Center in Moab, plans to let Congress in on the secret.

At the invitation of Sen. Jake Garn, R-Utah, Panos will marry those two seemingly divergent images when he testifies Wednesday in front of the U.S. Senate's Energy and National Resources Committee, at a hearing of the Public Lands, National Parks and Forest subcommittee.

Panos, on behalf of the university and Moab officials, is pushing a proposal to build the Kokopelli National Theater, a performing arts facility in the heart of Utah's arched, one-of-a-kind national parks caliber scenery. The proposed $9.3 million facilities — for which Congress is considering a $6 million appropriation — would host music, ballet and opera performances. Some of the performances would explore contemporary and ancient Indian themes, Panos said.

And why Moab?

"We've already got an international audience streaming through the area," Panos said. "That's the reason that this whole thing is going

Please see MOAB on B2

Deseret News,
9-25-90

MOAB

Continued from B1

to work. We have the audience. We certainly have the rare red rock terrain. And now we're going to put artistic performance in the middle of nature — and create beauty."

The university is working with Grand County and Moab officials to create a multifaceted performing arts mecca in southeastern Utah. The theater proposal, named for the humpbacked flute player who symbolizes fertility in petroglyphs found in the Four Corners area, is especially significant because it would be one of only four national facilities for the performing arts. The others, including the famed Wolf Trap Farm Park in suburban Washington D.C. as well as D.C.'s Kennedy Center, are east of the Mississippi River.

Already the College of Fine Arts and the Division of Continuing Education are shaping a unique quiver-ful of advanced arts classes based in the Moab area. While it's not unusual in educational circles to take field trips, the U. is pushing the walls of the outdoor classroom back even further. For example, consider rock-painting instruction taught under Fisher Towers in the Canyonlands region by an anthropologist and a painter, blending art and science.

In addition, the U. will continue to produce mobile wilderness performances, such as its popular Colorado River summer concert series, and next weekend's Greek theater performed near Corona Arch.

A spokesman for Garn's office, Mary Thiriot, director of community relations, said the Kokopelli Theater proposal is being introduced too late in the congressional session to expect much action. "But the senator is just pleased to introduce the idea to Congress."

Garn thinks the Kokopelli Theater could produce the same kind of positive economic effects for southeastern Utah that southwestern Utah receives from the Utah Shakespearean Festival.